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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 644.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DODGE, PLAINTIFF IN ERROR,

vs.

GEORGE B. CHANDLER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

yes yes No - affirmed

FILED JANUARY 31, 1877.

Dec 27 1877
Affirmed
Jno. Bradley

SUPREME COURT OF THE UNITED STATES.

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2 Pleas in the Circuit Court of the United States for the Eighth Judicial Circuit and District of Nebraska, before Hon. John F. Dillon, judge of the Circuit Court of the United States for the District of Nebraska, and the Hon. Elmer S. Dundy, judge of the district court of the United States for said district, sitting in said circuit court, at the term of November, 1876.

Be it remembered, that on the 23d day of September, 1876, a petition was filed in the office of the clerk of said circuit court, which said petition is in words and figures following, to wit:

Petition.

In the United States Circuit Court for the District of Nebraska.

GEORGE B. CHANDLER, PLAINTIFF,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE County of Dodge, Defendants.

The said plaintiff in this his petition says, that he is a resident of the city of Manchester in the State of New Hampshire, and a citizen of the State of New Hampshire. That the defendant is a municipal corporation in the State of Nebraska, composed wholly of citizens of said State of Nebraska. That on or about the 1st day of September, A. D. 1871, said defendant, under and by virtue of a majority vote of the qualified voters of Fremont precinct, a local subdivision of said Dodge county, and in pursuance of an act of the legislature of the State of Nebraska, approved February 15th, A. D. 1869, entitled an "Act to enable counties, cities, and precincts to borrow moneys on their bonds or to issue bonds to aid in the construction or completion of works of internal improvements in this state, and to legalize bonds already issued for such purpose," issued and negotiated bonds
4 of said Fremont precinct to the number of fifty, for the sum of one thousand dollars each, and numbered consecutively from one to fifty inclusive, each of which said bonds had interest-coupons attached for the payment of the annual interest as it became due on said bonds, a copy of which said bonds (with the exception of the numbers and coupons) is hereto attached, marked exhibit "A," and made a part of this petition.

1st. That on or about said 1st day of September, 1871, said defendant, under and by virtue of said vote aforesaid, and in pursuance of said act of the legislature aforesaid mentioned, issued and negotiated an interest-coupon attached to one of said bonds, numbered 45, a copy of which said coupon is as follows:

5 Coupon. "$100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1874, it being the interest on the bond No. 45.

"[SEAL.] A. G. BRUGH, *County Clerk.*"

Which said coupon was purchased for a valuable consideration
5 by the plaintiff before the same became due; that the said coupon was, when due, duly presented for payment and the payment of the same refused; that the same is now due and wholly unpaid.

2nd. That on about said 1st day of September, 1871, said defendant, under and by virtue of said vote aforesaid, and in pursuance of said act of the legislature aforesaid mentioned, issued and negotiated an interest coupon attached to one of said bonds, numbered 46, a copy of which said coupon is as follows:

"Coupon."

"$100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1874, it being the interest on bond No. 46.

"[SEAL.] A. G. BRUGH, *County Clerk.*"

Which said coupon purchased for a valuable consideration by this plaintiff before the same became due; that the said coupon was, when due, duly presented for payment and the payment of the same refused; that the same is due and wholly unpaid.

6 3rd. That on or about said 1st day of September, 1871, said defendant, under and by virtue of said vote aforesaid, and in pursuance of said act of the legislature aforesaid mentioned, issued and negotiated an interest-coupon attached to one of said bonds, numbered 47, a copy of which said coupon is as follows:

"Coupon."

"$100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1874, it being the interest on bond No. 47.

"[SEAL.] A. G. BRUGH, *County Clerk.*"

Which said coupon was purchased for a valuable consideration by the plaintiff before the same became due; that the said coupon was, when due, duly presented for payment and the payment of the same refused; that the same is due and wholly unpaid.

4th. That on or about said 1st day of September, 1871, said defendant, under and by virtue of said vote aforesaid, and in pursuance of said act of the legislature aforesaid mentioned, issued and
7 negotiated an interest-coupon attached to one of said bonds, numbered 50, a copy of which said coupon is as follows:

"$100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1874, it being the interest on bond No. 50.

"[SEAL.] A. G. BRUGH, *County Clerk.*"

Which said coupon was purchased for a valuable consideration by this plaintiff before the same became due; that the said coupon was,

when due, duly presented for payment and the payment of the same refused; that the same is due and wholly unpaid.

5th. That on or about said 1st day of September, 1871, said defendant, under and by virtue of said vote aforesaid, and in pursuance of said act of the legislature aforesaid mentioned, issued and negotiated an interest-coupon attached to one of said bonds, numbered 41, a copy of which said coupon is as follows:

Coupon.

"$100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1875, it being the interest on bond No. 41.

"[SEAL.] A. G. BRUGH, *County Clerk.*"

Which said coupon was purchased for a valuable consideration by the plaintiff before the same became due; that the said coupon was, when due, duly presented for payment and the payment of the same refused; that the same is due and wholly unpaid.

6th. That on or about said 1st day of September, 1871, said defendant, under and by virtue of said vote aforesaid, and in pursuance of said act of the legislature aforesaid mentioned, issued and negotiated an interest-coupon to one of said bonds, numbered 42, a copy of which said coupon is as follows:

Coupon.

"$100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1875, it being the interest on bond No. 42.

"[SEAL.] A. G. BRUGH, *County Clerk.*"

Which said coupon was purchased for a valuable consideration by this plaintiff before the same became due; that the said coupon was, when due, duly presented for payment and the payment of the same refused; that the same is due and wholly unpaid.

7th. That on or about said 1st day of September, 1871, said defendant, under and by virtue of said vote, and in pursuance of said act of the legislature aforesaid mentioned, issued and negotiated an interest-coupon attached to one of said bonds, numbered 43, a copy of which said coupon is as follows:

Coupon.

"$100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1875, it being the interest on bond No. 43.

"[SEAL.] A. G. BRUGH, *County Clerk.*"

Which said coupon was purchased for a valuable consideration by this plaintiff before the same became due; that the said coupon was, when due, duly presented for payment and the payment of the same refused; that the same is due and wholly unpaid.

8th. That on or about said 1st day of September, 1871, said defendant, under and by virtue of said vote aforesaid, and in pursuance of said act of the legislature aforesaid mentioned, issued and negotiated an interest-coupon attached to one of said bonds, numbered 44, a copy of which said coupon is as follows:

"Coupon."

"$100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1875, it being the interest on bond No. 44.

"[SEAL.] A. G. BRUGH, *County Clerk.*"

Which said coupon was purchased for a valuable consideration by this plaintiff before the same became due; that the said coupon was, when due, duly presented for payment and the payment of the same refused; that the same is due and wholly unpaid.

9th. That on or about said 1st day of September, 1871, said defendant, under and by virtue of said vote aforesaid, and in pursuance of said act of the legislature aforesaid mentioned, issued and negotiated an interest-coupon attached to one of said bonds, numbered 45, a copy of which said coupon is as follows:

"Coupon."

"$100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1875, it being the interest on bond No. 45.

"[SEAL.] A. G. BRUGH, *County Clerk.*"

Which said coupon was purchased for a valuable consideration by the plaintiff before the same became due; that the said coupon was, when due, duly presented for payment and the payment of the same refused; that the same is due and wholly unpaid.

10th. That on or about said 1st day of September, 1871, said defendant, under and by virtue of said vote aforesaid, and in pursuance of the said act of the legislature aforesaid mentioned, issued and negotiated an interest-coupon attached to one of said bonds, numbered 46, a copy of which said coupon is as follows:

"Coupon."

"$100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1875, it being the interest on bond No. 46.

"[SEAL.] A. G. BRUGH, *County Clerk.*"

Which said coupon was purchased for a valuable consideration by this plaintiff before the same became due; that the said coupon was, when due, duly presented for payment and the payment of the same refused; that the same is due and wholly unpaid.

11th. That on or about said 1st day of September, 1871, said defendant, under and by virtue of said vote aforesaid, and in pursu-

ance of said act of the legislature aforesaid mentioned, issued and negotiated an interest-coupon attached to one of said bonds, numbered 47, a copy of which said coupon is as follows:

"Coupon."

"$100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1875, it being the interest on bond No. 47.

"[SEAL.] A. G. BRUGH, *County Clerk.*"

Which said coupon was purchased for a valuable consideration by this plaintiff before the same became due; that the said coupon was, when due, duly presented for payment and the payment of the same refused; that the same is due and wholly unpaid.

12th. That on or about said 1st day of September, 1871, said defendant, under and by virtue of said vote aforesaid, and in pursuance of said act of the legislature aforesaid mentioned, issued
13 and negotiated an interest-coupon attached to one of said bonds, numbered 48, a copy of which said coupon is as follows:

"Coupon."

"$100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1875, it being the interest on bond No. 48.

"[SEAL.] A. G. BRUGH, *County Clerk.*"

Which said coupon was purchased for a valuable consideration by this plaintiff before the same became due; that the said coupon was, when due, duly presented for payment and the payment of the same refused; that the same is due and wholly unpaid.

13th. That on or about said 1st day of September, 1871, said defendant, under and by virtue of said vote aforesaid, and in pursuance of said act of the legislature aforesaid mentioned, issued and negotiated an interest-coupon attached to one of said bonds, numbered 49, a copy of which said coupon is as follows:

"Coupon."

"$100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the
14 city of New York, one hundred dollars, Sept. 1st, 1875, it being the interest on bond No. 49.

"[SEAL.] A. G. BRUGH, *County Clerk.*"

Which said coupon was purchased for a valuable consideration by this plaintiff before the same became due; that the said coupon was, when due, duly presented for payment and the payment of the same refused; that the same is due and wholly unpaid.

14th. That on or about said 1st day of September, 1871, said defendant, under and by virtue of said vote aforesaid, and in pursuance of said act of the legislature aforesaid mentioned, issued and negotiated an interest-coupon attached to one of said bonds, numbered 50, a copy of which said coupon is as follows:

"Coupon." "$100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1875, it being the interest on bond No. 50.

"[SEAL.] A. G. BRUGH, *County Clerk.*"

Which said coupon was purchased for a valuable consideration by this plaintiff before the same became due; that the said
15 coupon was, when due, duly presented for payment and the payment of the same refused; that the same is due and wholly unpaid.

15th. That on or about the said 1st day of September, 1871, said defendant, under and by virtue of said vote aforesaid, and in pursuance of said act of the legislature aforesaid mentioned, issued and negotiated an interest-coupon attached to one of said bonds, numbered 41, a copy of which is as follows:

"Coupon." "$100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1876, it being the interest on bond No. 41.

"[SEAL.] A. G. BRUGH, *County Clerk.*"

Which said coupon was purchased for a valuable consideration by this plaintiff before the same became due; that the said coupon was, when due, duly presented for payment and the payment of the same refused; that the same is due and wholly unpaid.

16th. That on or about said 1st day of September, 1871,
16 said defendant, under and by virtue of said vote aforesaid, and in pursuance of said act of the legislature aforesaid mentioned, issued and negotiated an interest-coupon attached to one of said bonds, numbered 42, a copy of which said coupon is as follows:

"Coupon." "$100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank in the city of New York, one hundred dollars, Sept. 1st, 1876, it being the interest on bond No. 42.

"[SEAL.] A. G. BRUGH, *County Clerk.*"

Which said coupon was purchased for a valuable consideration by this plaintiff before the same became due; that said coupon was, when due, duly presented for payment and the payment of the same refused; that the same is due and wholly unpaid.

17th. That on or about said 1st day of September, 1871, said defendant, under and by virtue of said vote aforesaid, and in pursuance of said act of the legislature aforesaid mentioned, issued and negotiated an interest-coupon attached to one of said
17 bonds, numbered 43, a copy of which said coupon is as follows:

"Coupon." "$100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1876, it being the interest on bond No. 43.

"[SEAL.] A. G. BRUGH, *County Clerk.*"

Which said coupon was purchased for a valuable consideration by this plaintiff before the same became due; that the said coupon was, when due, duly presented for payment and the payment of the same refused; that the same is due and wholly unpaid.

18th. That on or about the said 1st day of September, 1871, said defendant, under and by virtue of said vote aforesaid, and in pursuance of said act of the legislature aforesaid mentioned, issued and negotiated an interest-coupon attached to one of said bonds, numbered 44, a copy of which said coupon is as follows:

"Coupon." "$100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1876,
18 it being the interest on bond No. 44.

"[SEAL.] A. G. BRUGH, *County Clerk.*"

Which said coupon was purchased for a valuable consideration by this plaintiff before the same became due; that the said coupon was, when due, duly presented for payment and the payment of the same refused; that the same is due and wholly unpaid.

19th. That on or about the said 1st day of September, 1871, said defendant, under and by virtue of said vote aforesaid, and in pursuance of said act of the legislature aforesaid mentioned, issued and negotiated an interest-coupon attached to one of said bonds, numbered 45, a copy of which said coupon is as follows:

"Coupon." "$100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept 1st, 1876, it being the interest on bond No 45.

"[SEAL.] A. G. BRUGH, *County Clerk.*"

Which said coupon was purchased for a valuable considera-
19 tion by this plaintiff before the same became due; that the said coupon was, when due, duly presented for payment and the payment of the same refused; that the same is due and wholly unpaid.

20th. That on or about the said 1st day of September, 1871, said defendant, under and by virtue of said vote aforesaid, and in pursuance of said act of the legislature aforesaid mentioned, issued and negotiated an interest-coupon attached to one of said bonds, numbered 46, a copy of which said coupon is as follows:

"Coupon." "$100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1876, it being the interest on bond No. 46.

"[SEAL.] A. G. BRUGH, *County Clerk.*"

Which said coupon was purchased for a valuable consideration by this plaintiff before the same became due; that the said coupon was, when due, duly presented for payment and the payment of the same refused; that the same is due and wholly unpaid.

21st. That on or about said 1st day of September, 1871, said defendant, under and by virtue of said vote aforesaid, and in pursuance of said act of the legislature aforesaid mentioned, issued and negotiated an interest-coupon attached to one of said bonds, numbered 47, a copy of which said coupon is as follows:

"Coupon." "$100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1876, it being the interest on bond No. 47.

"[SEAL.] A. G. BRUGH, *County Clerk.*"

Which said coupon was purchased for a valuable consideration by this plaintiff before the same became due; that the said coupon was, when due, duly presented for payment and the payment of the same refused; that the same is wholly due and wholly unpaid.

22d. That on or about the said 1st day of September, 1871, said defendant, under and by virtue of said vote aforesaid, and in pursuance of said act of the legislature aforesaid mentioned, issued and negotiated an interest-coupon attached to one of said bonds, numbered 48, a copy of which said coupon is as follows:

"Coupon." "$100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1876, it being the interest on bond No. 48.

"[SEAL.] A. G. BRUGH, *County Clerk.*"

Which said coupon was purchased for a valuable consideration by this plaintiff before the same became due; that the said coupon was, when due, duly presented for payment and the payment of the same refused; that the same is due and wholly unpaid.

23rd. That on or about said 1st day of September, 1871, said defendant, under and by virtue of said vote aforesaid, and in pursuance of said act of the legislature aforesaid mentioned, issued and negotiated an interest-coupon attached to one of said bonds, numbered 49, a copy of which said coupon is as follows:

"Coupon." "$100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1876, it being the interest on bond No. 49.

"[SEAL.] A. G. BRUGH, *County Clerk.*"

22 Which said coupon was purchased for a valuable consideration by this plaintiff before the same became due; that the said coupon was, when due, duly presented for payment and the payment of the same refused; that the same is due and wholly unpaid.

24th. That on or about said 1st day of September, 1871, said defendant, under and by virtue of said vote aforesaid, and in pursuance of said act of the legislature aforesaid mentioned, issued and negotiated an interest-coupon attached to one of said bonds, numbered 50, a copy of which said coupon is as follows:

"Coupon.

"$100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1876, it being the interest on bond No. 50.

"[SEAL.] A. G. BRUGH, *County Clerk.*"

Which said coupon was purchased for a valuable consideration by this plaintiff before the same became due; that the said coupon was, when due, duly presented for payment and the payment of
23 the same refused; that the same is due and wholly unpaid.

Plaintiff further says that all of said bonds and all of said interest-coupons had the seal of said Dodge county attached.

That the said defendant paid the interest-coupons on said bonds which became due Sept. 1st, 1872, and Sept. 1st, 1873, and a portion of those that became due Sept 1st, 1874; that all of said coupons sued on in this action are just and valid claims against said defendant.

Wherefore plaintiff prays judgment against said defendant for the sum of $2,400, and interest on $400 of the same since Sept. 1st, 1874, and on $1,000 of the same since Sept. 1st, 1875, and on $1,000 of the same since Sept. 1st, 1876, all at the rate of ten per cent. per annum, and costs of suit.

W. H. MUNGER, *Plf's Atty.*

STATE OF NEBRASKA, } ss.
DODGE COUNTY. }

W. H. Munger, being duly sworn, on his oath says that he is the attorney for plaintiff in the above-entitled cause; that said plaintiff is a non-resident of the State of Nebraska and now absent
24 therefrom; that the facts stated in the foregoing petition are true, as he verily believes.

W. H. MUNGER.

Subscribed in my presence and sworn to before me, this 22nd day of September, A. D. 1876.

[SEAL.] L. M. KEENE.
Notary Public Dodge County, Nebraska.

"*Exhibit A.*"

UNITED STATES OF AMERICA,
STATE OF NEBRASKA.

It is hereby certified that

No. "Vignette." $1,000.

Fremont precinct, in the county "Vignette."
of Dodge in the State of Nebraska is indebted unto the bearer in the sum of one thousand dollars, payable on or before twenty years after date, with interest at the rate of ten per cent. per annum from date. Interest payable annually on the presentation of the proper coupons hereto annexed. Principal payable at the office of the county treasurer, in Fremont, Dodge county, Nebraska. Interest payable at the Ocean National Bank, in the city of New York.

This bond is one of a series issued in pursuance of, and in accordance with, a vote of the electors of said Fremont precinct, at a special election held on the 11th day of November, A. D. 1870, at which time the following proposition was submitted:

"Shall the County Commissioners of Dodge County, Nebraska, issue their special bonds on Fremont precinct in said county, to the amount not to exceed fifty thousand dollars, to be expended and appropriated by the county commissioners, or as much thereof as is necessary, in building a wagon bridge across the Platte river in said precinct; said bonds to be made payable on or before twenty years after date, bearing interest at the rate of ten per cent. per annum, payable annually; which proposition was duly elected, adopted, and accepted by a majority of the electors of said precinct voting in favor of the proposition."

And whereas the Smith Bridge Company of Toledo, Ohio, have entered into a contract with said county commissioners to furnish the necessary materials and to build and construct said bridge referred to in the foregoing proposition; therefore, this bond with others is issued in pursuance thereof, as well as under provisions of an act of the legislature of the State of Nebraska, approved February 15th, A. D. 1869, entitled an act to enable counties, cities, and precincts to borrow moneys on their bonds or to issue bonds to aid in the construction or completion of works of internal improvements in this state, and to legalize bonds already issued for such purposes.

In witness whereof we, the said county commissioners of said Dodge county, have hereunto set our hands, this 1st day of September, A. D. 1871.

[SEAL.]

GEO. F. BLANCHARD,
A. C. BRIGGS,
JOHN P. EATON,
County Commissioners.

Attest: A. G. BRUGH, *Co. Clerk.*

Upon the back of said petition appear endorsements in words and figures following to wit:

No. 374, C. In the U. S. circuit court, dist. of Neb., George B. Chandler, pl'tf, *vs.* The Board of County Commissioners of
27 the county of Dodge, dft. Petition. Filed Sept. 23, 1876. Watson B. Smith, clerk. W. H. Munger, pl'ft's att'y.

Thereupon, afterwards, to wit, on said 23d day of September, 1876, a summons was issued in said case, which said summons is in words and figures following, to wit:

UNITED STATES OF AMERICA, } *ss.*
DISTRICT OF NEBRASKA. }

The President of the United States of America to the Marshal of the District of Nebraska, greeting:

You are hereby commanded to notify the defendant, the board of County Commissioners of the County of Dodge, that it has been sued by George B. Chandler, in the Circuit Court of the United States for the District of Nebraska aforesaid, at Omaha; that unless it answer by the 23d day of October, A. D. 1876, the petition of the said plaintiff, this day filed against it in the clerk's office of said court, said petition will be taken as true, and judgment rendered accordingly.

You will make due return of this summons on the 2d day of Oct., A. D. 1876.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 23d day of September, A. D. 1876, and in the 101st year of the independence
28 of the United States.

Attest:

[SEAL.] WATSON B. SMITH, *Clerk.*

Attached to said summons is the return of the marshal, in words and figures following, to wit:

DISTRICT OF NEBRASKA, *ss.*

I hereby certify and return that, on the 24th day of September, 1876, I received the within summons, and on the 30th day of September, 1876, I served the same upon the within-named Thearon Nye and E. C. Burns, County Commissioners of the County of Dodge, State of Nebraska, in Dodge county, state and district of Nebraska, by delivering to and leaving with them a certified copy thereof, with all the endorsements thereon.

WILLIAM DAILY,
United States Marshal for the District of Nebraska.

Marshal's costs, $6.88.

By ASBURY TOWNSEND,
Deputy United States Marshal.

Upon the back of said summons appear endorsements in words and figures following, to wit:

No. 374. Doc. C. United States Circuit Court, District of
29 Nebraska. George B. Chandler *vs.* The Board of Co. Com'rs of the County of Dodge. Summons. Amount claimed of the defendant by the plaintiff is $2,400.00. Suit on $400.00 of the same since Sept. 1st, 1874, and on $1,000.00 of the same since Sept. 1st, 1875, and on $1,000.00 of the same since Sept. 1, 1876; all at the rate of 10 per cent. per annum, and costs of suit. Returned and filed Oct. 6, 1876. Watson B. Smith, clerk. W. H. Munger, att'y for pl'ff.

Thereupon, afterwards, to wit, on the 17th day of Oct., 1876, an answer was filed in said case, which said answer is in words and figures following, to wit:

Answer.

In the Circuit Court of the United States, District of Nebraska, Eighth Circuit.

GEORGE B. CHANDLER, PLAINTIFF,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE County of Dodge, Defendant.

And now comes the defendant, and for answer to the petition of the said plaintiff and to each and every count thereof, says:
30 Defendant admits that said plaintiff is a resident and citizen of the State of New Hampshire. Admits that defendant is a municipal corporation of the State of Nebraska, composed wholly of the citizens of the State of Nebraska.

Defendant denies that said defendant, on or about the 1st day of September, 1871, or at any other time, issued the bonds of said Fremont precinct to the amount of fifty thousand dollars or any other amount by virtue of a majority vote of the qualified voters of said Fremont precinct by virtue of any vote whatever under an act of the legislature, as in said petition stated, or any other act of the legislature of the State of Nebraska.

2nd. And for a second and further defence to each and every count in said petition stated, the defendant says, that on the 8th day of October, 1870, the board of county commissioners of said county submitted to the qualified electors of said precinct a proposition to issue the bonds of said precinct to the amount of fifty thousand dollars, to construct a toll-bridge across the Platte
31 river in said precinct. That the proposition so submitted was in words and figures as follows:

Notice of Special Election.

Notice is hereby given that on Friday, the 11th day of November next, at the court-house in Fremont, Dodge Co., Nebraska, a special

election will be held in Fremont precinct, in Dodge county, State of Nebraska, at which time the following propositions will be submitted to the qualified voters therein.

I. It is proposed to authorize the County Commissioners of Dodge County to construct a good and substantial wagon-bridge across the Platte river, near the foot of P street in the town of Fremont, or other suitable place for the convenience of the citizens of Fremont, together with approaches and roads and necessary buildings and improvements for the safety and good management of said bridge. The construction of said bridge shall be let by contract to the lowest responsible bidder.

II. It is proposed to authorize said county commissioners to issue and negotiate the bonds of said Fremont precinct, payable to bearer at the county treasurer's office of said Dodge county, on or before twenty years after the date thereof, bearing interest at
32 the rate of ten per cent. per annum from the date thereof, to aid in the construction of said bridge, the whole amount of said bonds not to exceed fifty thousand dollars, and the interest accruing on said bonds shall be paid annually.

III. It is proposed that for the purpose of raising a sinking-fund to pay the principal, interest, repairs, and contingent expenses, the said bridge shall be a toll-bridge, the rates of toll to be fixed and regulated from time to time by said county commissioners, and collected in pursuance of their order, and such tolls shall not be used for other purposes than above mentioned, and if said tolls collected shall not at any time be sufficient to pay the interest as the same shall become due on said bonds, and keep up necessary repairs and contingent expenses, and also create a sufficient sinking-fund to pay the principal of said bonds as the same shall mature, then the said county commissioners shall make a levy upon the taxable property of said Fremont precinct in addition to the usual
33 taxes for that purpose, and continue from year to year until said bonds are paid, and cause the same to be collected, provided that in any one year such levy shall not exceed one mill of a dollar of the valuation of the taxable property of said precinct.

IV. It is proposed that the said county commissioners may employ some suitable person to take the tolls at said bridge, who shall give bonds as may be required by said county commissioners, which bond shall be deposited with the county clerk of said county, and all moneys realized from tolls shall be deposited with some responsible banker at Fremont, subject to the order of the said county commissioners.

V. It is proposed that all contracts and arrangements for the said bridge and keeping the same in repair, and in the payment of principal and interest on said bonds not specified herein, shall be left to said county commissioners to be conducted to the best interests of said precinct.

VI. It is proposed that if the county of Saunders, or any precinct

Demurrer.

In the Circuit Court of the United States for the District of Nebraska.

GEORGE B. CHANDLER, PLTF.,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF Dodge, Deft.

And now comes the said plaintiff, by his atty., and demurs to the first cause of defence in its answer stated, and for the following reason:

That the same does not state facts sufficient to constitute a cause of defence.

And plaintiff demurs to the second cause of defence in said answer, for the reason—

That the same does not state facts sufficient to constitute a cause of defence. W. H. MUNGER, *Pltf's Atty.*

Upon the back of said demurrer appears endorsements in words and figures following, to wit:

No. 374. C. George B. Chandler, pltf., vs. The Board of
40 County Commissioners of the County of Dodge, deft. Demurrer. Filed Nov. 13, 1876. Watson B. Smith, clerk. W. H. Munger, pltf's atty.

Thereupon, afterwards, at the November term of said court, and on the 15th day of November, 1876, the following proceedings were had in said case, as appears of record on folio 684, journal C of said court, to wit:

GEORGE B. CHANDLER
vs.
BOARD OF COUNTY COM'RS OF DODGE COUNTY.

It is ordered by the court that this cause be, and the same is hereby, referred to Watson B. Smith, clerk of this court, to compute and ascertain the amount due to the said plaintiff on the coupons mentioned and set forth in the petition filed in this cause, up to and including the date of his report, and to report the same with all convenient speed.

Thereupon, afterwards, to wit, on the said 15th day of November, 1876, coupons were filed in said case, which said coupons are in words and figures following, to wit:

41 Coupon.

$100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1874, it being the interest on bond No. 45.

[SEAL.] A. G. BRUGH, *County Clerk.*

(On face:) 3.

Coupon. $100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1874, it being the interest on bond No. 46.

[SEAL.] A. G. BRUGH, *County Clerk.*

(On face:) 3.

Coupon. $100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1874, it being the interest on bond No. 47.

[SEAL.] A. G. BRUGH, *County Clerk.*

(On face:) 3.

42 Coupon. $100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1874, it being the interest on bond No. 50.

[SEAL.] A. G. BRUGH, *County Clerk.*

(On face:) 3.

Coupon. $100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1875, it being the interest on bond No. 41.

[SEAL.] A. G. BRUGH, *County Clerk.*

(On face:) 4.

Coupon. $100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1875, it being the interest on bond No. 42.

[SEAL.] A. G. BRUGH, *County Clerk.*

(On face:) 4.

Coupon. $100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1875, it being the interest on bond No. 43.

[SEAL.] A. G. BRUGH, *County Clerk.*

(On face:) 4.

43 Coupon. $100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1875, it being the interest on bond No. 44.

[SEAL.] A. G. BRUGH, *County Clerk.*

(On face:) 4.

Coupon. $100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1875, it being the interest on bond No. 45.

[SEAL.] A. G. BRUGH, *County Clerk.*

(On face:) 4.

Coupon. $100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1875, it being the interest on bond No. 46.

[SEAL.] A. G. BRUGH, *County Clerk.*

(On face:) 4.

44 Coupon. $100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1875, it being the interest on bond No. 47.

[SEAL.] A. G. BRUGH, *County Clerk.*

(On face:) 4.

Coupon. $100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1875, it being the interest on bond No. 48.

[SEAL.] A. G. BRUGH, *County Clerk.*

(On face:) 4.

Coupon. $100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1875, it being the interest on bond No. 49.

[SEAL.] A. G. BRUGH, *County Clerk.*

(On face:) 4.

Coupon. $100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1875, it being the interest on bond No. 50.

[SEAL.] A. G. BRUGH, *County Clerk.*

(On face:) 4.

45 Coupon. $100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1876, it being the interest on bond No. 41.

[SEAL.] A. G. BRUGH, *County Clerk.*

(On face:) 4.

Coupon. $100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1876, it being the interest on bond No. 42.

[SEAL.] A. G. BRUGH, *County Clerk.*

(On face:) 5.

Coupon. $100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1876, it being the interest on bond No. 43.

[SEAL.] A. G. BRUGH, *County Clerk.*

On face:) 5.

46 Coupon. $100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1876, it being the interest on bond No. 44.

[SEAL.] A. G. BRUGH, *County Clerk.*

(On face:) 5.

Coupon. $100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1876, it being the interest on bond No. 45.

[SEAL.] A. G. BRUGH, *County Clerk.*

(On face:) 5.

Coupon. $100. Fremont precinct, in Dodge county Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1876, it being the interest on bond No. 46.

[SEAL.] A. G. BRUGH, *County Clerk.*

(On face:) 5.

Coupon. $100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1876, it being the interest on bond No. 47.

[SEAL.] A. G. BRUGH, *County Clerk.*

(On face:) 5.

47 Coupon. $100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1876, it being the interest on bond No. 48.

[SEAL.] A. G. BRUGH, *County Clerk.*

(On face:) 5.

Coupon. $100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1876, it being the interest on bond No. 49.

[SEAL.] A. G. BRUGH, *County Clerk.*

(On face:) 5.

Coupon. $100. Fremont precinct, in Dodge county, Neb., will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1876, it being the interest on bond No. 50.

[SEAL.] A. G. BRUGH, *County Clerk.*

(On face:) 5.

Thereupon, afterwards, to wit, on the said 15th day of November, 1876, a report was filed in said case, which said report is in words and figures following, to wit:

48 Circuit Court of the United States for the District of Nebraska.

In the case of

GEORGE B. CHANDLER
vs.
BOARD OF COUNTY COMMISSIONERS OF DODGE CO.

I hereby report that I have this day assessed the plaintiff's damages on the coupons mentioned and set forth in said plaintiff's petition, at the sum of two thousand five hundred and sixty dollars and fifty-four cents, as follows:

Four coupons, $100 each, payable Sept. 1, 1874.....	$400 00
Int. 2 yrs. 2 mo. and 14 ds. at 7 per cent.....	61 76
Ten coupons, $100 each, payable Sept. 1, 1875.....	1,000 00
Int. 1 yr. 2 mo. and 14 ds. at 7 per cent.....	84 39
Ten coupons, $100 each, payable Sept. 1, 1876.....	1,000 00
Int. 2 mo. and 14 ds. at 7 per cent.....	14 39
	$2,560 54

WATSON B. SMITH, *Clerk.*

Upon the back of said report appear endorsements in words and figures following, to wit:

49 No. 374. Doc. C. United States Circuit Court District of Nebraska. George B. Chandler vs. Board of Co. Com'rs of Dodge Co. Report of clerk as to amount due plaintiff. Filed 15th day of Nov., 1876. Watson B. Smith, clerk.

Thereupon, afterwards, at the said November term of said court, and on the said 15th day of November, 1876, the following proceedings were had in said case, as appears of record on folio 682, journal C of said court, to wit:

GEORGE B. CHANDLER, PLFF.,
vs
THE BOARD OF COUNTY COMMISSIONERS OF THE County of Dodge, Defts.

And now, on this day, being the 15th day of November, A. D. 1876, this cause came on for hearing on the demurrer of the plaintiff to the answer of the defendant, and after hearing arguments of counsel, and the court being fully advised in the premises, it is ordered and adjudged by the court that said demurrer be sustained, and the said defendant having elected to stand upon said answer, and the jury being waived, it is ordered and adjudged that the said plaintiff, George B. Chandler, have and recover of and
50 from the defendant, the Board of County Commissioners of the County of Dodge, judgment for the sum of two thousand five hundred and sixty and $\frac{54}{100}$ ($2,560 $\frac{54}{100}$) dollars and costs taxed at $ ———— , but execution shall not issue on said judgment, but the same shall be enforced by the appropriate proceedings against the proper officers of said county to compel them to levy a sufficient tax upon the property taxable within the boundaries of what was Fremont precinct, in said county, at the date of the execution and issuing of said bonds and coupons, to wit, on the 1st day of September, A. D. 1871; and the judges of this court being divided in opinion, this cause is certified to the Supreme Court.

Thereupon, afterwards, to wit, on the 17th day of November, 1876, a certificate of division was filed in said case, which said certificate of division is in words and figures following, to wit:

In the Circuit Court of the United States, District of Nebraska, Eighth Circuit.

GEORGE B. CHANDLER, PLAINTIFF,
vs.
51 THE BOARD OF COUNTY COMMISSIONERS OF THE County of Dodge, Defendant.

Be it remembered, that at the regular November term, 1876, of said court, this cause came on for hearing on the demurrer of the plaintiff to the answer of said defendant. A copy of the petition of said plaintiff, also the answer of said defendant, and the demurrer of the said plaintiff is herewith set out in substance and legal effect.

Petition.

In the United States Circuit Court for the District of Nebraska.

GEORGE B. CHANDLER, PLAINTIFF,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE County of Dodge, Defendants.

The said plaintiff in this his petition says, that he is a resident of the city of Manchester in the State of New Hampshire, and a citizen

of the State of New Hampshire. That the defendant is a municipal corporation in the State of Nebraska, composed wholly of citi-
52 zens of said State of Nebraska. That on or about the first day of September, A. D. 1871, said defendant, under and by virtue of a majority vote of the qualified voters of Fremont precinct, a local subdivision of said Dodge county, and in pursuance of an act of the legislature of the State of Nebraska, approved February 15th, 1869, entitled an "Act to enable counties, cities, and precincts to borrow money on their bonds, or to issue bonds to aid in the construction or completion of works of internal improvements in this state, and to legalize bonds already issued for such purposes," issued and negotiated bonds of said Fremont precinct to the number of fifty, for the sum of one thousand dollars each, and numbered consecutively from one to fifty inclusive.

Each of said bonds had interest-coupons attached for the payment of the annual interest as it became due on said bonds, a copy of which said bond (with the exception of the numbers and the coupons) is hereto attached, marked exhibit "A," and made a part of of this petition. That on or about the first day of September, A. D. 1871, said defendant, under and by virtue of said vote aforesaid, and in pursuance of said act of the legislature aforesaid men-
53 tioned, issued and negotiated an interest-coupon attached to one of said bonds, numbered 45, a copy of which said coupon is as follows:

$100. Fremont precinct, in Dodge county, will pay to bearer, at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1874, it being the interest on bond No. 45.

[SEAL.] A. G. BRUGH, *County Clerk.*

Which said coupon was purchased for a valuable consideration by this plaintiff before the same became due; that the said coupon was, when due, duly presented for payment, and the payment of the same refused; that the same is now due and wholly unpaid, etc.

WM. H. MUNGER,
Attorney for Plaintiff.

Then follow 23 other counts, similar to the first, in all 24 coupons of $100 each, being interest due on the bonds described in the first count of the petition.

Copy of the Bond, Exhibit "A."

United States of America, State of Nebraska.

It is hereby certified that

No. — (Vignette.) $1,000.

Fremont precinct, in the county of Dodge, in the State of Ne-
54 braska, is indebted unto the bearer in the sum of one thousand dollars, payable on or before twenty years after date, with interest at the rate of ten per cent. per annum from date. Interest payable annually on the presentation of the proper coupons

hereto annexed. Principal payable at the office of the county treasurer, in Fremont, Dodge county, Nebraska. Interest payable at the Ocean National Bank, in the city of New York.

This bond is one of a series issued in pursuance of and in accordance with a vote of the electors of said Fremont precinct, at a special election held on the eleventh day of November, 1870, at which time the following proposition was submitted:

"Shall the County Commissioners of Dodge County, Nebraska, issue their special bonds on Fremont precinct, in said county, to the amount not to exceed fifty thousand dollars, to be expended and appropriated by the county commissioners, or as much thereof as is necessary in building a wagon bridge across the Platte river, in said precinct. Said bonds to be made payable on or before twenty years after date, bearing interest at the rate of ten per cent.
55 per annum, payable annually, which proposition was duly elected, adopted, and accepted by a majority of the electors of said precinct voting in favor of the proposition; and whereas the Smith Bridge Company, of Toledo, Ohio, have entered into a contract with said county commissioners to furnish the necessary materials and to build and construct said bridge referred to in the foregoing proposition;—

Wherefore this bond, with others, is issued in pursuance thereof, as well as under the provisions of an act of the legislature of the State of Nebraska, approved Feb. 15, 1869, entitled an act to enable counties, cities, and precincts to borrow money on their bonds to aid in the construction or completion of works of internal improvements in this state, and to legalize bonds already issued for such purpose.

In witness whereof we, the said county commissioners of said Dodge county, have hereunto set our hands, this 1st day of September, A. D. 1871.

GEORGE F. BLANCHARD,
A. C. BRIGGS,
JOHN P. EATON.
County Commissioners.

Attest: A. G. BRUGH,
County Clerk.

Answer.

To this petition the defendant have filed the following answer:

56 In the Circuit Court of the United States, District of Nebraska, Eighth Circuit.

GEORGE B. CHANDLER, PLAINTIFF,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY of Dodge, Defendant. } Answer.

And now comes the defendant, and for answer to the petition of the said plaintiff, and to each and every count thereof, says:

Defendant admits that said plaintiff is a resident and citizen of the State of New Hampshire.

Admits that defendant is a municipal corporation in the State of Nebraska, composed wholly of the citizens of the State of Nebraska.

Defendant denies that said defendant, on or about the first day of November, 1871, or at any other time, issued the bonds of said Fremont precinct to the amount of fifty thousand dollars, or any other amount, by virtue of a majority vote of the qualified
57 voters of said Fremont precinct, or by virtue of any vote whatever under an act of the legislature, as in said petition stated, or any other act of the legislature of the State of Nebraska.

2d. And for a second and further defence to each and every count in said petition stated, the defendant says that on the 4th day of October, 1870, the board of county commissioners of said county submitted to the qualified electors of said precinct a proposition to issue the bonds of said precinct to the amount of fifty thousand dollars, to construct a toll-bridge across the Platte river in said precinct. That the proposition so submitted was in words and figures as follows:

Notice of Special Election.

Notice is hereby given that on Friday, the 11th day of November next, at the court-house in Fremont, Dodge county, Nebraska, a special election will be held in Fremont precinct, in Dodge county, State of Nebraska, at which time the following proposition will be submitted to the qualified voters therein:

1st. It is proposed to authorize the County Commissioners of Dodge County to construct a good and substantial wagon bridge across the Platte river, near the foot of F street in the town of Fremont, or other suitable place, *for the convenience of the citizens of Fremont*, together with approaches and roads and necessary
58 buildings and improvements for the safety and good management of said bridge.

The construction of said bridge shall be let by contract to the lowest responsible bidder.

2nd. It is proposed to authorize said county commissioners to issue and negotiate the bonds of said Fremont precinct, payable to bearer at the county treasurer's office of said Dodge county, on or before twenty years after date, bearing interest at the rate of ten per cent. per annum from the date thereof, to aid in the construction of said bridge, the whole amount of said bonds not to exceed fifty thousand dollars, and the interest accruing on said bonds shall be paid annually.

3rd. It is proposed that for the purpose of raising a sinking-fund to pay the principal, interest, repairs, and contingent expenses, the said bridge shall be a toll-bridge, the rates of toll to be fixed and regulated from time to time by said county commissioners, and collected in pursuance of their order, and such tolls shall not be used for other purposes than above mentioned, and if said tolls collected shall not at any time be sufficient to pay the interest as the

same shall become due on said bonds, and keep up necessary repairs and contingent expenses, and also create a sufficient sinking-fund to pay the principal of said bonds as the same shall mature, then the said county commissioners shall make a levy upon the taxable property of said Fremont precinct, in addition to the usual taxes for that purpose, and continue from year to year until said bonds are paid, and cause the same to be collected, provided that in any one year such levy shall not exceed one mill of a dollar of the valuation of the taxable property of said precinct.

4th. It is proposed that the said county commissioners may employ some suitable person to take the tolls at said bridge, who shall give bonds as may be required by said county commissioners, which bond shall be deposited with the county clerk of said county, and all moneys realized from tolls shall be deposited with some responsible banker at Fremont, subject to the order of the said county commissioners.

5th. It is proposed that all contracts and arrangements for the said bridge and keeping the same in repair, and in the payment of principal and interest on said bonds not specified herein, shall be left to said county commissioners, to be conducted to the best interests of said precinct.

6th. It is proposed that if the county of Saunders, or any precinct therein, through the County Commissioners of Saunders County, Nebraska, shall at any time contribute to the County Commissioners of Dodge County, Nebraska, one-half of the first cost of said bridge, with one-half of the interest that shall have been paid and what is owing, and agree to pay from that time one-half of the expense of keeping said bridge in repair, then the Commissioners of the Counties of Dodge and Saunders may declare the same *a free bridge*. But should said County Commissioners of Saunders County, Nebraska, make no such contribution, then the County Commissioners of Dodge County shall keep the said bridge *a toll-bridge* until the principal and interest on said proposed bonds are fully paid and discharged, and as much longer as shall be for the interest of said Fremont precinct so to do.

It is further ordered, that notice of the submission of said proposition be published at least four weeks in the Fremont Tribune, a weekly paper published at Fremont, in said Dodge county, prior to the election as hereinafter mentioned; and it is further ordered, that a special precinct election be held in Fremont precinct, at the court-house in said Fremont precinct, on the eleventh day of November, 1870, which election shall be opened at the hour of eight o'clock in the morning, and continue open until six o'clock in the afternoon of the same day.

All persons in favor of issuing said bonds in pursuance of the foregoing proposition will vote a ballot with the words, "For the issuing of bonds, Yes," written or printed on the same; and all persons opposed to issuing the bonds aforesaid will vote a ballot, "For issuing the bonds, No."

By order of the county commissioners, this 8th day of October, A. D. 1870.

A. G. BRUGH,
County Clerk, Dodge County, Nebraska.

Defendant further says that the election was held on the 11th day of November, 1870, and that a majority of the votes cast at said election were in favor of issuing the bonds of said precinct for the purpose in said proposition stated.

62 Defendant further says that the proposition heretofore stated was the only proposition submitted to the voters of said precinct on the question of issuing said fifty thousand dollars in bonds of said precinct, and that the election held on said 11th day of November, 1870, was the only election held in said precinct on the question of issuing said fifty thousand dollars in bonds of said precinct.

That said fifty thousand dollars in bonds of said precinct were issued by the board of county commissioners of said county by virtue of said proposition so submitted to the electors of said precinct, and without any other authority whatever.

That the coupons in said petition described were attached to the bonds so issued for the purpose aforesaid.

The defendant further says that the board of county commissioners of said county did, by virtue of the proposition aforesaid submitted to the legal voters of said precinct, build a toll-bridge across said Platte river in said precinct, and did pay for building said bridge the said fifty thousand dollars in bonds of said precinct issued as aforesaid. Defendant further says that said bridge, when

63 completed, was run and operated as a toll-bridge, collecting from all persons traveling over the same certain rates of tolls as fixed by the board of county commissioners of said county, and that said bridge has ever since that time been run and operated as a toll-bridge.

Defendant further avers that said bridge was not built on any public highway in said precinct, county, and state.

Defendant further says that said bonds were not issued to aid in the construction or completion of any works of internal improvement in the said precinct, county, and State of Nebraska, but that said bonds were issued to build said toll-bridge, and for no other purpose whatever; that said bonds and coupons thereto attached were issued under and by virtue of the pretended authority in said proposition so submitted to the voters of said precinct, and without any authority whatever. That said bonds were not issued by virtue of any statute or law of the State of Nebraska, or by virtue of any statute or law of the United States, but were issued without authority of law.

Wherefore the defendant demands judgment for costs.

W. A. MARLOW,
Attorney for Defendant.

64 *Demurrer.*

To this answer the plaintiff has filed a general demurrer, which is as follows:

In the Circuit Court of the United States for the District of Nebraska.

GEORGE B. CHANDLER, PLAINTIFF,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE County of Dodge, Defendant. } Demurrer.

And now comes the said plaintiff by his attorney and demurs to the first cause of defence in its answer stated, and for the following reason:

1st. That the same does not state facts sufficient to constitute a cause of defence.

And plaintiff demurs to the second cause of defence in said answer, for the reason—

2d. That the same does not state facts sufficient to constitute a cause of defence.

W. H. MUNGER,
Plaintiff's Attorney.

Upon the consideration of said demurrer, final judgment having been rendered thereon for the plaintiff, the opinion of the
65 judges holding said court, namely, the circuit judge and the district judge, were opposed upon the following questions thereon arising, to wit:

1st. Whether the said answer sets up a sufficient defence in law to the causes of action stated in the petition.

2nd. Whether the recital in the bond charged the holder thereof with notice of the proposition which was in fact the one submitted to a vote of the people as contained in and shown by the records of the county.

3rd. Whether the fact that the bonds were issued for a toll-bridge of the character of the one set forth in the proposition submitted to the votes of said Fremont precinct, as shown in the answer, makes them invalid in the hands of the holder thereof for value before due without other notice than that imparted on the face of the bonds.

And the said points being at the same time stated under the direction of the said judges, it is ordered that the said points be, and they are, certified to the Supreme Court of the United States according to the statute in such case provided.

66 JOHN F. DILLON.
ELMER S. DUNDY.

Upon the backs of said certificate of division appear endorsements in words and figures following, to wit:

No. 374. C. George B. Chandler vs. The Board of County Commissioners of the County of Dodge. Division of opinions. Filed Nov. 17, 1876. Watson B. Smith, clerk.

Thereupon, afterwards, on the 9th day of December, A. D. 1876, a bond was filed in said case, in words and figures following, to wit:

Know all men by these presents, that we, the Board of County Commissioners of Dodge County, Nebraska, as principal, and J. E. Shervin and C. A. Smith, as sureties, are held and firmly bound unto George B. Chandler in the penal sum of thirty-five hundred dollars, to the payment whereof well and truly to be made we
67 bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents.

Dated at Fremont, this 5th day of Dec., 1876.

Whereas, lately, at a term of the Circuit Court of the United States for the District of Nebraska, in a suit depending in said court between George B. Chandler, plaintiff, and the Board of County Commissioners of Dodge County, Nebraska, defendant, a judgment was rendered against the said defendant for the sum of twenty-five hundred and sixty and $\frac{54}{100}$ dollars ($2,560$\frac{54}{100}$) damages and for costs of suit, and the said The Board of County Commissioners of Dodge County having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid suit, and a citation directed to the said George B. Chandler citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington, the second Monday in October next.

Now, therefore, the condition of the above obligation is
68 such, that if the above-bounden Board of County Commissioners of Dodge County shall prosecute its said writ of error to effect and answer all damages and costs if it fail to make its plea good, and just damage for delay, and costs and interest thereon, then this obligation shall be void; otherwise of force.

This bond is approved, and is to operate as a supersedeas.

December 9, 1876.

JOHN F. DILLON, *Judge.*

F. M. FILLMORE,
THERON NYE,
E. C. BURNS,
County Commissioners of Dodge County, Nebraska.

J. E. SHERVIN,
C. A. SMITH,
Sureties.

(Endorsed:) No. 374. C. United States Circuit Court, District of Nebraska. George B. Chandler vs. Board of Co. Com'rs of Dodge Co. Bond. Filed December 9th, 1876. Watson B. Smith, clerk.

69 The signers of the within bond and obligation are good sureties for the amount named in said bond.

W. H. MUNGER,
Atty. for G. B. Chandler.

Thereupon, afterwards, on said 9th day of December, A. D. 1876, a writ of error was allowed by said court and citation issued in said case, of which the following are the originals:

UNITED STATES OF AMERICA, } ss.
DISTRICT OF NEBRASKA. }

The President of the United States of America to the honorable the judges of the Circuit Court of the United States for the District of Nebraska, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between George B. Chandler, plaintiff, and the Board of County Commissioners of the County of Dodge, Nebraska,
70 defendant, a manifest error hath happened, to the great damage of the said defendant in the said cause, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States shall be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, at Omaha, in said
71 district, this 9th day of December, 1876.

WATSON B. SMITH, *Clerk.*

Allowed by JNO. F. DILLON.
Filed Dec. 9, 1876. WATSON B. SMITH, *Clerk.*

THE UNITED STATES OF AMERICA, } ss.
DISTRICT OF NEBRASKA. }

To George B. Chandler, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in

the clerk's office of the Circuit Court of the United States for the District of Nebraska, wherein The Board of County Commissioners of the County of Dodge, Nebraska, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said
72 writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Omaha, this 9th day of December, 1876. JNO. F. DILLON.

I hereby accept service of a copy of this citation, this 12th day of Dec., 1876. W. H. MUNGER,
Atty. for Plaintiff.

Filed Dec. 12th, 1876. WATSON B. SMITH, *Clerk.*

DISTRICT OF NEBRASKA, *ss.*

By virtue of the foregoing writ of error, in obedience thereto, I, Watson B. Smith, clerk of the Circuit Court of the United States for the Eighth Judicial Circuit and District of Nebraska, do hereby certify that the foregoing folios, from one to sixty (60), contain full and true transcripts of all pleadings, process, and proceedings in the case of George B. Chandler, plaintiff, vs. The Board of
73 County Commissioners of Dodge County, defendants, as the same remains of record and on file in my office as said clerk, and the whole thereof, and the endorsements thereon, and that a copy of the writ of error and citation herein has been lodged in my office.

Witness my hand, and the seal of said court, this 13th day of December, 1876.

[SEAL.] WATSON B. SMITH, *Clerk.*

(Endorsed on cover:) Nebraska C. C. U. S. No. 644. The Board of County Commissioners of the County of Dodge, plaintiff in error, vs. George B. Chandler. Filed January 31, 1877.

In the Supreme Court

OF THE

UNITED STATES.

October Term, 1877.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DODGE,
Plaintiff in Error,
vs.
GEORGE B. CHANDLER,
Defendant in Error.

Error to the Circuit Court for the District of Nebraska.

Brief of Plaintiff in Error.

W. A. MARLOW,
Attorney

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1877.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DODGE, Plaintiff in Error, *vs.* GEORGE B. CHANDLER, Defendant in Error.	In Error.

ASSIGNMENT OF ERRORS.

Afterwards, to wit, on the 17th day of November, 1877, in this same term, before the justices of the said court, at the Capitol in Washington, came the said plaintiff in error, by W. A. Marlow, its attorney, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit: that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said defendant in error, George B. Chandler, against the said plaintiff in error, the Board of County Commissioners of the County of Dodge, whereas by the law of the land the said judgment ought to have been given for the said plaintiff against the said defendant.

2. The court erred in sustaining the demurrer to the answer of the plaintiff in error.

And the said plaintiff prays that the judgment aforesaid, for the error aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that the said plaintiff may be restored to all things which it has lost by occasion of said judgment, etc.

W. A. MARLOW,
Attorney for Plaintiff in Error.

IN THE SUPREME COURT

OF THE

UNITED STATES.

The Board of County Commissioners of the County of Dodge,
PLAINTIFF IN ERROR

vs.

George B. Chandler,
DEFENDANT IN ERROR.

A copy of the petition filed by the defendant in error in the circuit court is herewith set out in full:

PETITION.

In the United States Circuit Court, for the District of Nebraska.

GEORGE B. CHANDLER, Plaintiff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DODGE, Defendant.

The said plaintiff in this his petition says that he is a resident of the city of Manchester, in the State of New Hampshire, and a citizen of the State of New Hampshire. That the defendant is a municipal corporation in the State of Nebraska, composed wholly of citizens of said State of Nebraska. That on or about the first day of September, A. D. 1871, said defendant, under and by virtue of a majority vote of the qualified voters of Fremont precinct, a local subdivision of said Dodge county, and in pursuance of an act of the Legislature of the State of Nebraska, approved February 15th, 1869, entitled an "act to enable counties, cities and precincts to borrow money on their bonds, or to issue bonds to aid in the construction or completion of works of internal improvements in this State, and to legalize bonds already issued for such purpose," issued and negotiated bonds of said Fremont precinct to the number of fifty, for the sum of one thousand dollars each, and numbered consecutively from one to fifty inclusive. Each of said bonds had interest coupons attached for the payment of the annual interest as it became due on said bonds, a copy of which said bonds (with the exception of the numbers and the coupons) is hereto attached, marked exhibit "A," and made a part of this petition. That on or about the first day of September, A. D. 1871, said defendant, under, and by virtue of said vote aforesaid mentioned, issued and negotiated an interest coupon attached to one of said bonds numbered 45; a copy of said coupon is as follows:

$100.00.

Fremont precinct, in Dodge county, will pay to bearer at the Ocean National Bank, in the city of New York, one hundred dollars, Sept. 1st, 1874, it being the interest on bond No. 45.

SEAL

A. G. BRUGH, County Clerk.

Which said coupon was purchased for a valuable consideration by this plaintiff before the same became due. That the said coupon was when due, duly presented for payment, and the payment of the same refused; that the same is now due and wholly unpaid, etc

W. H. MUNGER, Attorney for plaintiff.

Then follow 23 other counts similar to the first, in all 24 coupons of $100 each, being interest due on the bonds described in the first count of the petition.

COPY OF THE BOND, EXHIBIT "A."

United States of America, State of Nebraska:—It is hereby certified that

No.——— [VIGNETTE] $1,000.

Fremont precinct, in the county of Dodge, in the State of Nebraska, is indebted unto the bearer in the sum of one thousand dollars, payable on or before twenty years after date with interest at the rate of ten per cent. per annum from date. Interest payable annually on the presentation of the proper coupons hereto annexed. Principal payable at the office of the County Treasurer, in Fremont, Dodge county, Nebraska; interest payable at the Ocean National Bank, in the city of New York. This bond is one of a series issued in pursuance of and in accordance with a vote of the electors of said Fremont precinct at a special election held on the eleventh day of November, 1870, at which time the following proposition was submitted:

"Shall the county commissioners, of Dodge county, Nebraska, issue their special bonds on Fremont precinct, in said county, to the amount not to exceed fifty thousand dollars, to be expended and appropriated by the county commissioners, or as much thereof as is necessary in building a wagon bridge across the Platte river, in said precinct. Said bonds to be made payable on or before twenty years after date, bearing interest at the rate of ten per cent. per annum, payable annually, which proposition was duly elected, adopted and accepted by a majority of the electors of said precinct voting in favor of the proposition;

and, whereas, the Smith Bridge company, of Toledo, Ohio, have entered into a contract with said county commissioners to furnish the necessary materials and to build and construct said bridge referred to in the foregoing proposition.

"Wherefore, this bond, with others, is issued in pursuance thereof as well as under the provision of an act of the Legislature of the State of Nebraska, approved February 15th, 1869, entitled an act to enable counties, cities and precincts to borrow money on their bonds to aid in the construction or completion of works of internal improvements in this State and to legalize bonds already issued for such purpose.

"In witness whereof, we, the said county commissioners of said Dodge county, have here unto set our hand this 1st day of September, A. D. 1871.

GEORGE F. BLANCHARD,
A. C. BRIGGS,
JOHN P. EATON,
County Commissioners."

Attest:
A. G. BRUGH, County Clerk.

ANSWER.

To this petition the Board of County Commissioners filed in said Circuit Court the following answer:

In the Circuit Court of the United States, District of Nebraska, Eighth Circuit.

GEORGE B. CHANDLER,
Plaintiff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DODGE,
Defendant.

And now comes the defendant, and for answer to the petition of the said plaintiff and to each and every count thereof says:

Defendant admits that said plaintiff is a resident and citizen of the State of New Hampshire. Admits that defendant is a municipal corporation in the State of Nebraska, composed wholly of the citizens of the State of Nebraska.

Defendant denies that said defendant on or about the first day of November, 1871, or at any other time, issued the bonds of said Fremont precinct to the amount of fifty thousand dollars or any other amount by virtue of a majority vote of the qualified voters of said Fremont precinct, or by virtue of any vote whatever under an act of the Legislature as in said petition stated or any other act of the Legislature of the State of Nebraska.

2d. And for a second and further defense to each and every count in said petition stated, the defendant says that on the 4th day of October, 1870, the Board of County Commissioners of said county submitted to the qualified electors of said precinct a proposition to issue the bonds of said precinct to the amount of fifty thousand dollars, to construct a toll bridge across the Platte river in said precinct. That the proposition so submitted was in words and figures as follows:

NOTICE OF SPECIAL ELECTION.

Notice is hereby given that on Friday, the 11th day of November next, at the Court House, in Fremont, Dodge county, Nebraska, a special election will be held in Fremont precinct, in Dodge county, State of Nebraska, at which time the following proposition will be submitted to the qualified voters therein:

1st. It is proposed to authorize the County Commissioners of Dodge county to construct a good and substantial wagon bridge across the Platte river near the foot of F street in the town of Fremont, or other suitable place FOR THE CONVENIENCE OF THE CITIZENS OF FREMONT, together with approaches and roads and necessary buildings and improvements for the safety and good management of said bridge. The construction of said bridge shall be let by contract to the lowest responsible bidder.

2d. It is proposed to authorize said County Commissioners to issue and negotiate the bonds of said Fremont precinct, payable to bearer at the County Treasurer's office of said Dodge county on or before twenty years after date, bearing interest at the rate of ten per cent. per annum from the date thereof, to aid in the construction of said bridge, the whole amount of said bonds not to exceed fifty thousand dollars, and the interest accruing on said bonds shall be paid annually.

3d. It is proposed that for the purpose of raising a sinking fund to pay the principal, interest, repairs and contingent expenses, the said bridge shall be a toll bridge, the rates of toll to be fixed and regulated from time to time by said County Commissioners, and collected in pursuance of their order, and such tolls shall not be used for other purposes than above mentioned, and if said tolls collected shall not at any time be sufficient to pay the interest as the same shall become due on said bonds, and keep up necessary repairs and contingent expenses, and also create a sufficient sinking fund to pay the principal of said bonds as the same shall mature, then the said County Commissioners shall make a levy upon the taxable property of said Fremont precinct in addition to the usual taxes for that purpose, and continue from year to year until said bonds are paid, and cause the same to be collected, provided that in any one year such levy shall not exceed one mill on a dollar of the valuation of the taxable property of said precinct.

4th. It is proposed that the said County Commissioners may employ some suitable person to take the tolls at said bridge who shall give bonds as may be required by said County Commissioners, which bond shall be deposited with the County Clerk of said county, and all moneys realized from tolls shall be deposited with some responsible banker at Fremont, subject to the order of the said County Commissioners.

5th. It is proposed that all contracts and arrangements for the said bridge and keeping the same in repair, and in the payment of principal and interest on said bonds not specified herein shall be left to said County Commissioners to be conducted to the best interests of said precinct.

6th. It is proposed that if the county of Saunders or any precinct therein through the County Commissioners of Saunders county, Nebraska, shall at any time contribute to the County Commissioners of Dodge county, Nebraska, one half the first cost of said bridge, with one half of the interest that shall have been paid and what is owing, and agree to pay from that time one half of the expense of keeping said bridge in repair, then the Commissioners of the counties of Dodge and Saunders may declare the same A FREE BRIDGE. But should said County Commissioners of Saunders county, Nebraska, make no such contribution then the County Commissioners of Dodge county shall keep the said bridge A TOLL BRIDGE until the principal and interest on said proposed bonds are fully paid and discharged, and as much longer as shall be for the interest of the said Fremont precinct so to do.

It is further ordered that notice of the submission of said proposition be published at least four weeks in the Fremont Tribune, a weekly paper published at Fremont, in said Dodge county, prior to the election as hereinafter mentioned, and it is further ordered that a special pre-

cinct election be held in Fremont precinct, at the Court House in said Fremont precinct, on the eleventh day of November, A. D. 1870, which election shall be opened at the hour of eight o'clock in the morning, and continue open until six o'clock in the afternoon of the same day. All persons in favor of issuing said bonds in pursuance of the foregoing proposition will vote a ballot with the words "For the issuing of bonds, Yes," written or printed on the same, and all persons opposed to issuing the bonds aforesaid will vote a ballot "For issuing the bonds, No."

By order of the County Commissioners this 8th day of October, A. D. 1870.

A. G. BRUGH,
County Clerk, Dodge county, Nebraska.

Defendant further says that the election was held on the 11th day of November, 1870, and that a majority of the votes cast at said election were in favor of issuing the bonds of said precinct for the purposes in said proposition stated.

Defendant further says that the proposition heretofore stated was the only proposition submitted to the voters of said precinct on the question of issuing said fifty thousand dollars in bonds of said precinct, and that the election held on said 11th day of November, 1870, was the only election held in said precinct on the question of issuing said fifty thousand dollars in bonds of said precinct. That said fifty thousand dollars in bonds of said precinct were issued by the Board of County Commissioners of said county by virtue of said proposition so submitted to the electors of said precinct and without any other authority whatever

That the coupons in said petition described were attached to the bonds so issued for the purpose aforesaid. The defendant further says that the Board of County Commissioners of said county did by virtue of the proposition aforesaid submitted to the legal voters of said precinct build a TOLL BRIDGE across said Platte river in said precinct and did pay for building said bridge the said fifty thousand dollars in bonds of said precinct issued as aforesaid. Defendant further says that said bridge when completed was run and operated as a TOLL BRIDGE, collecting from all persons traveling over the same certain rates of tolls as fixed by the Board of County Commissioners of said county, and that said bridge has ever since that time been run and operated as a TOLL BRIDGE.

Defendant further avers that said bridge was not built on any public road or highway in said precinct, county and state.

Defendant further says that said bonds were not issued to aid in the construction or completion of any works of internal improvement in the said precinct, county and State of Nebraska; but that said bonds were issued to build said TOLL BRIDGE and for no other purpose whatever; that said bonds and coupons thereto attached were issued under and by virtue of the pretended authority in said proposition so submitted to the voters of said precinct and without any authority whatever. That said bonds were not issued by virtue of any statute or law of the State of Nebraska, or by virtue of any statute or law of the United States, but were issued without authority of law.

Wherefore the defendant demands judgment for costs.

W. A. MARLOW,
Attorney for Defendant.

To this answer the defendant in error filed in said Circuit Court a general demurrer which is as follows:

In the United States Circuit Court, for the District of Nebraska.

GEORGE B. CHANDLER,
Plaintiff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DODGE,
Defendant.

DEMURRER.

And now comes the said plaintiff by his attorney and demurs to the first cause of defense in its answers stated and for the following reason:

1st.—That the same does not state facts sufficient to constitute a cause of defence.

And plaintiff demurs to the second cause of defence in said answer for the reason:

2d.—That the same does not state facts sufficient to constitute a cause of defence.

W. H. MUNGER,
plaintiff's attorney.

In consideration of the demurrer the judges were opposed in opinion on the following points:

1st.—Whether the answer set up a sufficient defense in law to the causes of action stated in the petition.

2d.—Whether the recitals in the bond charged the holder thereof with notice of the proposition, which was, in fact, the one submitted to a vote of the people as contained in and shown by the record of the county.

3d.—Whether the fact that the bonds were issued for a toll bridge of the character of the one set forth in the proposition submitted to the voters as shown in the answer, makes them invalid in the hands of a holder thereof for value before due without other actual notice than that imported on the face of the bond.

The statute authorizing and regulating the issuing of bonds for works of internal improvements is as follows: Gen. Statutes 448 (passed and took effect February 15th, 1869.)

Sec. 1 That any county or city in the State of Nebraska is hereby authorized to issue bonds to aid in the construction of any railroad or other work of internal improvement the amount to be determined by the county commissioners of such county, or the city council of such city, not exceeding ten per cent. of the assessed valuation of all taxable property in said county or city; Provided: The county commissioners or city council shall first submit the question of issuing such bonds to a vote of the legal voters of said county or city in the manner provided by chapter nine of the Revised Statutes of Nebraska for submitting to the people of a county the question of borrowing money.

The statute referred to in the previous section is as follows. Gen. Statutes 235:

Sec. 16. The county commissioners shall have power to submit to the people of the county at any regular or special election the questions referred to in the preceding section, or to submit to the people of the county any question involving an extraordinary outlay of money by the county. Said commissioners may aid any enterprise designed for the benefit of the county as aforesaid whenever a majority of the people shall be in favor of the proposition so submitted.

Sec. 18. The mode of submitting questions to the people as contemplated by the preceding sections of this chapter shall be as follows:

The whole question including the sum desired to be levied, or the rate per annum, and the whole regulation including the sum desired to be raised, or the amount of the tax desired to be levied, or the rate per annum, and the whole regulation including the time of its taking effect, or having operation, if it be of a nature to be set forth, and the penalty for its violation, if there be one, is to be published for four weeks in some newspaper published in the county. If there be no such newspaper published, the publication is to be made by being posted up in at least one of the most public places in each election precinct in the county, and in all cases the notices shall name the time when such question will be voted upon, and the form in which the question shall be taken, and a copy of the question submitted shall be posted up at each place of voting during the day of election

Sec. 19. When the question submitted involves the borrowing or expenditure of money, the proposition of the question must be accompanied by a provision to levy a tax for the payment thereof, and no vote adopting the question proposed shall be valid, unless it likewise adopt the amount of tax to be levied to meet the liability incurred.

Sec. 20. At the time specified in such notice a vote of the qualified electors shall be taken in each precinct at the place designated in such notice. The votes shall be received and the returns thereof made, and the same shall be canvassed by the same officers and in the same manner as required at each general election.

Sec. 21. If it appears that a majority of the votes cast are in favor of the proposition, and the requirements of the law have been fully complied with, the same shall be entered at large by the county commissioners upon the book containing the record of their proceedings, and they shall then have the power to levy and collect the special tax in the same manner that the other county taxes are collected. Proposition thus acted upon cannot be rescinded by the county commissioners.

Section 2, of the act of 1869, is as follows:

The proposition of the question must be accompanied by a provision to levy a tax annually for the payment of the interest on said bonds

as it becomes due, and, provided further, that no tax shall be levied or collected to pay any of the principal of said bonds until after the year 1880.

Sec. 3. The proposition shall state the rate of interest such bonds shall draw, and when the principal and interest shall be payable.

Sec. 5. It shall be the duty of the proper officers of such county or city to cause to be annually levied, collected and paid to the holders of such bonds a special tax on all taxable property within said county or city sufficient to pay the annual interest as the same becomes due; such officers shall in like manner collect an additional amount, sufficient to pay the same as it becomes due, provided that when any bonds have been heretofore issued such officers shall not levy or collect any amount more than may be necessary to pay the amount annually falling due by the condition of such bonds until after the year 1880; provided that not more than ten per cent. of the principal of said bonds shall be collected in any one year, excepting where bonds have been heretofore issued and by the conditions of such bonds are required to be paid in some other manner.

Sec. 6. Any county or city which shall have issued its bonds in pursuance of this act shall be estopped from pleading want of consideration therefor, and the proper officers of such county or city may be compelled by mandamus or otherwise to levy the tax herein provided to pay the same.

Sec. 7. Any precinct in any organized county of this State shall have the privilege of voting to aid works of internal improvement and be entitled to all the privileges conferred upon counties and cities by the provisions of this act; and in such cases the precinct election shall be governed in the same manner as is provided in this act—so far as the same is applicable, and the county commissioners shall issue special bonds for such precinct, and the tax to pay the same shall be levied upon the property within the bounds of such precinct; such precinct bonds shall be the same as other bonds, but shall contain a statement showing the special nature of such bonds.

Sec. 39. General Statutes 239 is as follows:

It shall be the duty of the County Clerk

1st. To record in a book to be provided for that purpose all proceedings of the board

2d. To make regular entries of their resolutions and decisions in all questions concerning the raising of money.

Statute of 1869:

Sec. 4. Upon a majority of the votes cast being in favor of the proposition submitted in the case of a county, and the city council in the case of a city, shall cause the proposition, and the result of the vote to be entered upon the records of said county etc.

Chapter 62, entitled Records, Gen. Statutes 883:

Sec. 1. All citizens of this State, and all other persons interested in the examination of the public records, are hereby fully empowered and authorized to examine the same, free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business. The Statute requires that the clerk shall keep a record of the proceedings of the county commissioners.

Sec. 4, of the act of 1869, as well as the Statute, referred to in that act, requires that the proposition and the result of the vote be entered upon the records of said county.

Sec. 1, of chapter 62, provides that all persons interested shall have the right to the examination of the public records free of charge.

Sec. 21, Gen. Statutes 256, referred to in the act of 1869, provides that if a majority of the votes cast are in favor of the proposition, and the requirements have been fully complied with, the same shall be entered at large by the county commissioners upon the book containing the record of their proceedings, and they then shall have power to levy and collect the special tax, etc.

The purchaser of these bonds is bound to take notice of the Statute regulating their issue and all other Statutes of the State which in any way affect their validity. It is presumed that the commissioners have complied with the law in having a record made of the proposition and the votes cast. In fact it is a duty under the Statutes devolving upon the clerk to make this record. The law presumes that it was made. This record is as much a public record as any record belonging to the county. It is made so by Statute. The conclusion that this record is

just as public as the law itself; is inevitable. If the purchaser of these bonds is bound to take notice of the law governing their issue, he is also bound to look to the record containing the proposition and vote, for the reason that this record is a part of the law itself.

This Statute provides that after the proposition and vote has been made a matter of record as required, then the commissioners have power to levy and collect the tax, etc.; until that is done there is no way by which the commissioners could be compelled to levy the tax. This Statute the purchaser of these bonds is bound to notice, as they cannot be paid except by taxation. There is no other way of raising the funds. If he is bound to look to the Statute, providing the manner of payment that the bonds can only be paid by taxation, he is also bound to know at what time, and under what circumstances the commissioners can levy the tax.

Before the County Commissioners have power to issue the bonds of the precinct for any purpose known to the Statute, they shall first submit the question to a vote of the electors of the precinct. The proposition thus submitted must contain the following:

1st. The amount of bonds to be issued.
2d. The purpose for which they are to be issued.
3d. The time when payable.
4th. The rate of interest such bonds shall draw, and when payable.
5th. The amount of tax to be levied.
6th. The time when such question will be voted upon, and the form in which the vote shall be taken.

If this proposition be submitted to the electors of the precinct, and the vote thus taken is in favor of issuing the bonds, if the purpose for which they are to be issued is to aid in the construction of any railroad or other work of internal improvement, the bonds thus issued in the hands of innocent purchasers before due will be binding obligations upon the precinct if on their face they contain the proper recitals, notwithstanding there may have been some error or irregularity in the proposition itself, or the manner in which it was submitted. The submission of the question to a vote of the electors of the precinct is a condition precedent incident to the power to act. If they act without complying with this condition, they act without authority, and the bonds are invalid in the hands of any one, which we will show was the fact in the case at bar.

In Subdivision 5, of Section 14, Gen. Statutes 234, entitled "County Commissioners, their powers and duties," it is provided that they have power "to lay out, alter or discontinue any road running through their county, and also to perform such other duties respecting roads as may be provided by law"

Section 15, Gen. Statutes 954, entitled "Roads," provides that "one-third of all the moneys paid into the county treasury in discharge of road tax shall constitute a county road fund, which shall be at the disposal of the County Commissioners for the general benefit of the county for road purposes; the other two-thirds of all moneys paid into the county treasury in discharge of road tax shall constitute a district road fund, which shall be expended only in that district from which it was collected, and only for the following purposes:

1st—For the construction and repair of bridges and culverts.

2d—For the payment of damages for the right of way of any county road.

3d—For the payment of wages of superyisors, and for the expense of procuring the necessary guide boards.

4th—For the payment of the wages of commissioners of roads, surveyor, chainman and other persons engaged in locating or changing any county road."

It is further provided in the 4th Subdivision of Section 15 "that the County Commissioners may levy an additional cash tax for bridge purposes not to exceed five mills on the dollar of the assessed value of all taxable property, to be levied and collected as other taxes, which special tax when so collected shall be exclusively applied to building or repairing permanent and substantial culverts or bridges under the direction of the County Commissioners of the several counties in this State, be and they are hereby authorized in their discretion to build or repair any bridge or bridges within the limits of any incorporated town or city within their respective counties." Section 16 of said act provides that "the County Commissioners may let contracts to the lowest competent bidder for the improvement of such roads as may be of general necessity, and pay for the same by orders on the county treasury, payable out of the county road fund; but no contract shall be

entered into for a greater sum than double the amount of money on hand in the county road fund, and every bidder, etc.

From the Statutes it will readily appear that the road here referred to is a public highway, not a toll road or a private enterprise. Another reason for arriving at this conclusion is this: The funds used in laying out and improving such roads are collected by taxation on the property within the county. Taxes cannot be levied and collected except for public purposes. Again, the Legislature if it had the power under the constitution of the State to authorize counties and precincts to build and operate TOLL BRIDGES never granted that privilege to Dodge county or Fremont precinct; if it did, it will be found in the act referred to in plaintiff's petition. Section 7 of said act, General Statutes 449, entitled "internal improvements" is as follows:

"Any precinct, in any organized county of this State, shall have the privilege of voting to aid works of internal improvement, and be entitled to all the privilege conferred upon counties and cities by the provisions of this act; and in such case the precinct election shall be governed in the same manner as is provided in this act so far as the same is applicable, and the County Commissioners shall issue special bonds for such precinct, and the tax to pay the same shall be levied upon the property within the bounds of such precinct. Such precinct bonds shall be the same as other bonds, but shall contain a statement showing the special nature of such bonds."

The title to the act referred to is as follows:

"An act to enable counties, cities and precincts to borrow money on their bonds, or to issue bonds to aid in the construction or completion of works of internal improvements in this State, and to legalize bonds already issued for such purpose."

It is very clear from the reading and a fair construction of this act that when the funds belonging to the county road fund, and the levy of an additional cash tax of five mills on the dollar of the assessed valuation is insufficient to enable the County Commissioners to build such bridges as the public demands, then the County Commissioners have the power to submit to the voters of the precinct or county the question of issuing bonds to aid in the erection and completion of such PUBLIC

BRIDGES, as the County Commissioners were unable to build with the money collected in the ordinary way. The bonds when voted and issued are under the control of the County Commissioners, to be used by them in the erection and completion of the PUBLIC BRIDGES proposed to be erected. Section 7, of said act, provides that when bonds are issued by precincts, the manner of payment of the principal and interest shall be by a tax levied upon all the property within the bounds of the precinct. It certainly will not be claimed tha it is necessary to make the bridge when erected A TOLL BRIDGE, for the purpose of paying the principal and interest on these bonds. The law fixes the manner of payment; that must govern. If Fremont precinct had the power to say whether it would build a TOLL BRIDGE or not, there would be no doubt of the authority to issue the bonds for that purpose in this case, but this power has not been delegated to counties or precincts to determine that question. If I am correct in my views, then the only authority which the Commissioners had to issue the bonds in question was the proposition submitted to the voters of the precinct. It will not be claimed that this farce gave the Commissioners any power to act; that County Commissioners have no power to issue the bonds of the county or precincts to aid in the erection or completion of TOLL BRIDGES must be conceded.

In the case of the Union Pacific Railroad Company vs. The Commissioners of Colfax county, 4 Neb., 450, opinion by Justice Maxwell, it was held that county bonds issued for the purpose of erecting a public bridge over the Platte river conformable in all respects to the laws of this State, authorizing the issuance of bonds in aid of works of internal improvement, are valid; also that a PUBLIC BRIDGE is a work of internal improvement. The Court says: "The amount derived from these funds is to be expended under their direction for the purposes specified in the Statute, but, in case the amount thus placed at their disposal is not sufficient to make improvements deemed to be necessary for the public good, they may submit to the people, in the manner prescribed by law, the question of issuing bonds to aid in the construction of the desired improvement. If the vote is in the affirmative, and the bonds are issued in all respects in conformity to law, and the improvement for which

they are issued is a work of internal improvement, the bonds will be valid, but no authority exists to aid a merely private enterprise."

That toll bridges are private enterprises I presume will be conceded. If they come under that head, then, under this decision, the Commissioners had no authority or power to issue bonds of the county or precinct for that purpose. If the power does not exist, the bonds issued for that purpose are void in the hands of any one, although purchased before due and without notice. This rule is too well settled to require the citation of authorities to sustain it. The rule I understand to be this: If at the time the bonds were issued the Commissioners did not have the power to issue them for the purpose of building and operating a toll bridge, then the bonds are invalid in the hands of innocent holders The power in this case did not exist, and for this reason the bonds are void. But it is claimed that although the bonds were issued without authority, if the recitals in the bonds showed that under any circumstances the Commissioners had the power to issue them, although the recitals in the bonds so issued were false, still they would be valid in the hands of innocent holders before due without notice of the illegal purpose for which they were issued.

I don't understand that any court has gone to this extent; the proposition is startling; that the bonds may be issued for any purpose such as building and operating factories, grist mills, toll bridges, or running a general dry goods business, and that without the consent of the electors of the county or precinct, provided the recitals in the bonds show that the Commissioners had power to issue them for the purposes stated in the bond. There is no implied power to issue bonds for any purpose, but the power must be expressly given. In this case there was no power to issue the bonds except to aid in the construction or completion of works of internal improvement within the State. The Commissioners had no more power to issue bonds for the purpose of building and operating a TOLL BRIDGE than they would have had had this Statute of 1869 never been passed. They had just as much power to issue these bonds, sell them, and appropriate the proceeds to their own private use, as they had to issue them for the purpose for which they were issued. What protection has the tax-payer got if this rule be adopted? The Legislature has

opened the door, although not intending to do so, by permitting the issue of bonds for a particular purpose, and no other; still with this limitation the Commissioners have the power to issue them for any purpose, although that purpose may be dealing in crooked whiskey, or in buying munitions of war, to be used by highwaymen in robbing railway trains, stage coaches, banks, and in taking the lives of the peaceful citizens of the State, provided the recital in the bond, although false, shows that the power existed for the purpose named in the bond. If this proposition be sound, what has become of the law governing principal and agent, fixing the liability of the principal when represented by an agent? Has the rule been modified which compels third parties in dealing with an agent to know the extent of the authority of the agent? When was this rule changed? I take it that it has not been changed. If third parties dealing with an agent are bound to know the extent of his authority, what is the result when applied to this case?

Dillon on municipal corporations, paragraph 381.

The author in treating this question, says: "The general principle of law is settled beyond controversy that the agents, officers, or even city council of a municipal corporation cannot bind the corporation by any contract which is beyond the scope of its powers, or entirely foreign to the purposes of the corporation, or which (not being in terms authorized) is against public policy. This doctrine grows out of the nature of such institutions, and rests upon reasonable and solid grounds. The inhabitants are the corporators, the officers are but the public agents of the corporation. Their duties and powers are prescribed by statute or charter, which all persons not only may know, but are bound to know. The opposite doctrine would be fraught with such danger, and accompanied with such abuse, that it would soon end in the ruin of municipalities, or be legislatively overthrown. These considerations vindicate both the reasonableness and necessity of the rule that the corporation is bound only when its agents or officers by whom it can alone act, if it acts at all, keep within the limits of the chartered authority of the corporation. The history of the workings of municipal bodies has demonstrated the salutary nature of this principle, and that it is the part of true wisdom to keep the corporate wings clipped down to the lawful

standard. It results from this doctrine that unauthorized contracts are void, and in actions thereon the corporation may successfully interpose the plea of ULTRA VIRES, setting up as a defence its own want of power under its charter, or constituent Statute to enter into the contract."

Floyd acceptances, 7 Wallace 666.

In the case of Polland vs. Pleasant Hill, 3 Dillon C. C., 196, was an action on certain coupons originally attached to negotiable bonds issued by the de endant city under legislative authority. The bonds were of two classes, one issued in payment of stock in a railway company, the other under the funding act of the State, authorizing municipalities to fund their indebtedness and issue bonds therefor.

The defense set up to the bonds issued in funding the indebtedness of the city was that the bonds were not issued in payment of outstanding warrants, or in satisfaction of liabilities of the city, but that they were issued to raise funds to improperly influence legislation, quoting an ordinance of the city, from which it would appear that such was the case.

In that case the bonds were issued for a lawful purpose, to wit: To fund the indebtedness of the city. If the funds were unlawfully used, which were derived from the sale of these bonds, that fact would not invalidate the bonds. In the case at bar it is different. The bonds were issued for an unlawful purpose. The purpose for which they were issued was incorporated in the proposition. The bonds were used for that particular purpose. The issue and use for that purpose was unauthorized.

In the case of Mullarky Adm. vs. the town of Cedar Falls, 19 Iowa 21, Lowe, J., in this opinion says:

"There is a marked difference between the building of a bridge as a necessary improvement of a street, and dedicating it to the public as a common highway or easement and the erection of a toll bridge on the same street for pecuniary profit. The one is legitimate, the other outside of the corporate powers. Not so distinctly perhaps as the establishment of a boundary, or the erection of a mill and taking toll for grinding, yet somewhat similar in principle, and embarking in a business which does not fall within the necessary objects of a municipal corporation and which had better be left to private enterprise."

Clark vs. the city of Des Moines, 19 Iowa 199, 18 Dillon, J., speaking for the court says:

"It is also set up in bar of a recovery on certain warrants payable to Turner, that they were issued and loaned to aid him in constructing a toll bridge across the Raccoon river in the corporate limits of the city. This is the substance of the answer in this respect. No person or corporation can erect a TOLL BRIDGE, and levy and collect tolls, any more than a person or corporation can set up a ferry and levy and collect ferriage unless this be authorized by the law of the State (to Jure Maris ch. II Id III) where Sir Mathew Hale says: 'No man can take a settled or constant toll even in his own private land for a common passage without the King's license.'

4 Am. Law Reg. N. S 573, and authorities there cited.

Prosser vs Wapello Co. 18 Iowa 327.

Mullarky vs. Cedar Falls, ante.

"How Turner obtained authority to erect a toll bridge within the corporate limits of the city does not appear. The authority may, as in the Cedar Falls case just cited, ante-date corporate organization of the city. Whether under the Statute it can be conferred by the county authorities within the limits and upon the streets of the city we need not stop to inquire; we will assume on the averments that Turner had the lawful power to erect the bridge. The city of Des Moines under its charter possessed no power to erect such a bridge for itself and by itself. Nor would it have the power to erect such a bridge jointly, with an individual, or to appropriate funds of the city in aid of such a PRIVATE ENTERPRISE.

"The power of the city to improve sidewalks, alleys and streets, etc. would not authorize it to erect or aid in the erection of a toll bridge by a loan of the corporate credit.

"Turner's bridge was, it would appear, essentially an individual enterprise. Let it be granted that if erected the bridge would be of advantage to the city, etc. So the erection of an elevator or a private market-house might be beneficial to the city. But would this justify the city in issuing its warrants and loaning them to a private individual to aid him in erecting the elevator or private market-house? No instance occurs to us in which it would be competent for the city to loan its

credit or make its accommodation paper for the benefit of citizens to enable them to execute private enterprises."

"1 Parsons, N. & B. 166."
"Smead vs I. P. & C. R. R. Co."
"11 Sud. 105."

"To recognize such a right would be to break down, to a great extent the checks and limitations designed to protect and secure the inhabitants against the dangers of speculative and extra municipal projects. Though the averments are not very full and specific, the answer sets up that the warrants were loaned to Turner to aid in building a toll bridge for himself, and this PRIMA FACIA at least is in excess of the corporate authority of the city, etc."

Again the learned Judge says in the same case :

"We decide only that it cannot loan its credit or property to aid an individual in constructing a toll bridge, or to aid any other scheme essentially private. To prevent municipal corporations from engaging in banking and speculative enterprises it is necessary, as this case shows, and as the current history of these bodies have demonstrated, to keep the corporate wings clipped down to the legal standard."

In the case of the Fremont Building Association vs. John E. Shervin, County Treasurer, opinion by Lake, Chief Justice, among other things says : "The first objection urged against the bonds is that they were issued to aid in the construction of a toll bridge, which it is insisted there is no authority for a county or precinct to do. But even conceding that these governmental agencies have no legal right to engage in the business of toll gatherers, which can hardly be questioned, this furnishes no valid excuse for the repudiation of these bonds, especially when they have passed into the hands of innocent parties. They bear no infirmity on their face, but on the contrary purport to have been issued for a lawful purpose, and in strict conformity to the Statute authorizing this sort of precinct indebtedness.

A toll bridge is not a work of "internal improvement." The Supreme Court of Nebraska has so decided in the case cited.—

In this case the Court holds that the Commissioners have no power to build and operate toll bridges; but as the recitals on the face of the bonds show that the Commissioners had power to issue them for the purpose recited on the face of the bonds, they are good in the hands of innocent holders.

In the case at bar the power did not exist to issue the bonds of the precinct to aid in building a toll bridge. The power did exist to issue bonds to aid in building public bridges; but a public bridge is one thing, and a toll bridge is another. The Statute certainly is very plain. The bridge there referred to is a public bridge. If the Commissioners have no power to operate a toll bridge, they certainly have no power to pledge the credit of the precinct to aid in building one.

In the case of Township of Burlington vs. Beasley, 4 Otto, 310, the Statute in that case authorized the issue of bonds to aid in building bridges, free or otherwise, or to aid in the construction of railroads or water power by donation thereto on the taking of stock, etc.

In Sec. 65 of the Statutes of Kansas, 1868, page 573, it is provided that all water or other mills whose owners or occupiers grind or offer to grind grain for toll or pay, are hereby declared public mills. It will readily appear that this Statute is entirely different from the Statute of Nebraska, which authorizes the issue of bonds to aid in building public bridges. They have power to build public bridges, not free or otherwise, but free bridges and no other kind. A toll bridge may be a work of internal improvement, but within the meaning of our Statute it is not. Neither precincts, cities or counties have power under our Statute to engage in the business of toll-gatherers. If that be true, they have no power to engage in business of builders of toll-bridges. Under the Kansas Statute bonds could be issued to aid in building toll bridges, but here it is different.

In the case at bar no amount is authorized for the purpose of building toll bridges. It certainly cannot be claimed that because the Commissioners have issued these bonds without any authority whatever that there was an error or irregularity in their issue. An error or irregularity is one thing, and want of power is another. If the power is wanting it matters not how formal they may have been issued, the form will not make them valid. An error or irregularity presupposes that the power did exist, but was irregularly executed.

In the case at bar no proposition was ever submitted to the electors of the precinct asking them if they were in favor of issuing the bonds of the precinct in the sum of fifty thousand dollars, or any other sum, to aid works of "internal improvement," to wit: the erection of a PUBLIC BRIDGE

But suppose the bonds were used in building a public bridge, the Commissioners would have no power to issue them without first submitting the question to a vote of the electors of the precinct. A recital on the face of the bonds that the question was submitted to a vote would not bind the precinct if it was false. That rule certainly applied to this case.

Floyd Acceptances, 7 Wall., 666.

William J. Lewis vs. Commissioners of Bourbon Co., 12 Kansas, 186, and cases there cited.

Commissioners of Knox Co., vs. Aspinwall, 21 How., 539.

Commissioners of Johnson Co.,—Supreme Court of the United States—4 Otto, 631, opinion by Mr. Justice Hunt.

The Court among other things says:

"The case of Lewis vs. Commissioners of Bourbon county, 12 Kan., 186, is cited on this point. In that case four questions were passed upon by the Supreme Court of Kansas.

FIRST.—"Was the presentation of a petition signed by one-fourth of the qualified voters a condition precedent to the valid action of the Commissioners?

SECOND.—"Did the failure to name the corporation in the proposition submitted to the electors avoid the whole proceeding.

THIRD.—"A majority of the votes of the electors having been cast against the proposition to issue bonds, was the county board authorized to issue them.

FOURTH.—"Did the subsequent submission and the proceedings thereon confer the authority to issue the bonds.

"The Court held the first objection was cured by the act of 1868. The second and third objections were held to be fatal and that the case was not relieved by the proceedings referred to in the fourth objection.

"The court did in its language hold that the objection raised in the present case, to wit: that the name of the corporation was not inserted in the proposition for the popular vote was fatal. Had this been the only or an indispensible part of the decision we should have been called upon to inquire whether the decision was of that class of State decisions upon its own Statute that was binding upon us. The other question, however, existing and decided in the Bourbon county case, was in its nature so exclusive and so controlling that anything said or professed to be decided beyond it, does not require much consideration.

"The Court held that in the exercise of its general jurisdiction it had power to inquire into the number of votes actually cast for and against the proposition. Upon this point all the decisions of this Court and so far as we know of all other courts concur. If a majority of the electors cast their votes against the proposition to issue the bonds the entire foundation of the proceedings is gone. There is an absolute want of jurisdiction to proceed farther in the matter, and an attempt to do so is void as are all proceedings or issues based upon it. With this elemental failure existing in the Bourbon county case, other and further decisions tending to the same result, are not to be regarded as authority."

The rule would certainly be the same if the proposition submitted did not authorize the Commissioners to issue the bonds for any purpose known to the Statute.

A recital on the face of the bonds that a majority of the votes cast were in favor of their issue will not bind the precinct if in fact a majority of the votes cast were opposed to their issue. A recital on the face of the bonds that they were issued to aid works of "internal improvement" will not bind the precinct if they were issued to build a grist mill, factory, or a toll bridge. This proposition must be conceded. Suppose the voters of Fremont precinct were in favor of issuing the bonds of the precinct to build a grist mill, to charge tolls for grinding, or a large building to be used for general merchandizing, either by the precinct or rented to parties who desired to engage in that business. Will it be claimed that the property of the precinct is bound to pay these bonds for the reason that the grist mill or store building can be converted into

a court house or jail, not intending to build a court house or jail, but as you cannot use them for the purpose for which they were built, and in order to protect the bond-holder they must be converted into some use authorized. This bridge was built for a toll bridge. After the bonds are issued and used for that purpose, in order to save the bond-holder and make the transaction legal this toll bridge must be converted into a public bridge. The transaction is illegal in its inception. Under what rule of law can that which was illegal then be declared legal now? The voters of the precinct did not want a free bridge, because they voted for a toll bridge. What authority has the Court to say that they are now in favor of a free bridge? That question must be decided by the voters themselves. They have not as yet had that opportunity; if they had no doubt but what a majority of the votes cast would be opposed to building a free bridge. It seems to me to uphold these bonds for the reasons I have stated, the Court must say that a public bridge is absolutely necessary across the Platte river. That the voters of the precinct shall consent to have one, and the Commissioners shall make it free, and thus make lawful use of that which was built for an unlawful purpose. This proposition is too absurd to consider for a moment. If the voters of the precinct had the power to say that the bonds of the precinct should be issued to aid in building toll bridges, grist mills, and factories, no doubt but what the bonds in this case would have to be paid. But this power has not been delegated to them. They have no power to enact a law by which they shall be governed when it comes to the question of confiscating the property of those who were opposed to this kind of speculation and adventure as well as those who are so unfortunate as to own property within the limits but reside elsewhere. They have invested their money in good faith, willing to pay their proportion of lawful taxes assessed against them, but unwilling to have their property confiscated in adventures and speculations. Pledge the property of the precinct for capital stock; engage in the enterprise; if a failure, then say the public demands the use of this property; take it it and pay the bonds. Have not property owners and tax payers some rights as well as the purchasers of these bonds? I believe they

have, and I believe this Court will so decide in this case. It certainly cannot be claimed that that part of the proposition submitted, which states the purpose for which the bonds are to be issued, is surplusage, to-wit: to aid in building a toll bridge. If so, then the Statute must be disregarded.

Sec. 18, General Statutes of Nebraska 235 provides that the whole question including the sum desired to be levied, etc. shall be submitted. What are we to understand by the whole question? It certainly means, if it means anything, that among other things submitted the purpose for which the bonds are to be used must be named. If not, then it is unnecessary to name the purpose in any case. The voter never could know for what purpose the bonds were to be issued. The proposition submitted must be taken as an entirety. That part which authorizes the vote can not be separated from that which strips it of legal authority If the proposition taken together shows that the purpose and object in issuing the bonds is to aid in building a PUBLIC BRIDGE then it is good; if not, and it shows that the purpose and object in issuing the bonds is to aid in the building of a toll bridge, then that is the purpose named and no other. Is it repudiation to refuse to pay a debt which never had any legal existence? Suppose a child had contracted this debt, would it be repudiation to refuse payment? Neither the voters or the Commissioners had power to contract the indebtedness. Why, then, call it repudiation? The Commissioners would not discharge their duty if they did not resist the payment of these bonds. They are not governed by moral obligations in the discharge of their duties. It is their duty to protect the tax payer and the funds of the county and to refuse payment in all cases unless there is a legal liability.

A municipality is represented by its officers They are its financial agents with clearly defined powers and duties. If they exceed their authority their power to bind the municipality ceases.

In the case of the Floyd Acceptances, 7 Wall 666, the Court says:

"It cannot be maintained that because an officer can lawfully issue bills of exchange for some purpose, that no inquiry can be made in any case into the purpose for which a bill was issued. The government can-

not be held to a more rigid rule in this respect than a private individual.

"If A authorize B to buy horses for him, and to draw on him for the purchase money, B cannot buy land and bind A by drawing on him for the price. Such a doctrine would enable a man in private life, to whom a well-defined and limited authority was given, to ruin the principal who had conferred it. So it would place the government at the mercy of all its agents and officers, although the laws under which they act are public statutes. This doctrine would enable the head of a department to flood the country with bills of exchange, acceptances, and other forms of negotiable paper without authority and without limit. No government could protect itself under such a doctrine by any statutory restriction of authority short of an absolute prohibition of the use of all commercial paper."

Again, admitting for the sake of argument that the law of agency does not apply to municipal securities, also that conditions precedent, constitutional and statutory limitations have no power when applied to municipal bonds, providing on their face they show that they have been issued in pursuance of the Statute authorizing their issue for certain specified purposes, whether issued for that purpose or not, or whether the recitals be true or false, still admitting all this to be the law governing these securities we have in this case an exception to this general rule, which is as firmly established by repeated decisions of the highest court of the United States as the rule itself. The purchasers of these bonds are bound to take notice of the recitals on the face of the bond. If it appears that the law has been complied with which governs their issue the purchaser can rely on that statement and is not bound to look farther and the municipality is bound to pay. If there is no recital on the face of the bond the purchaser is bound to look to the authority to issue the compliance with conditions precedent incident to the power. If these conditions have not been complied with the municipality is not liable. If the bond contains a recital of what was done in a compliance with these conditions, and this statement shows that the law has not been complied with, then the purchaser is bound by this recital just as much as if it had been in his favor. The bonds described in the petition

being the foundation on which the coupons are based must contain a statement that the statute authorizing their issue has been complied with in the absence of such a statement the plaintiff must aver and prove this fact before a recovery can be had.

The proposition submitted to the electors of the precinct, and the only proposition submitted as appears upon the face of these bonds, is as follows:

"This bond is one of a series issued in pursuance of, and in accordance with a vote of the electors of said Fremont precinct, at a special election held on the eleventh day of November, A. D. 1870, at which time the following proposition was submitted:

"'Shall the County Commissioners of Dodge county, Nebraska issue their special bonds on Fremont precinct, in said county, to the amount not to exceed fifty thousand dollars to be expended and appropriated by the County Commissioners or as much thereof as is necessary in building a wagon bridge across the Platte river in said precinct. Said bonds to be made payable on or before twenty years after date bearing interest at the rate of ten per cent. per annum, payable annually';" which propositition was duly elected, adopted and accepted by a majority of the electors of said precinct, voting in favor of the proposition.

The adoption of this proposition by a majority of the electors of the precinct will not give the Commissioners authority to issue the bonds.

Sec. 19, Gen. Statutes 236, provides, "when the question submitted involves the borrowing or expenditure of money, the proposition of the question must be accompanied by a provision to levy the tax for the payment thereof, and no vote adopting the question proposed shall be valid, unless it likewise adopts the amount of tax to be levied to meet the liability incurred."

This section, with others, is referred to in the act of February 15th, 1869, authorizing the issue of bonds in aid of works of internal improvement, and made a part of the same.

The proposition submitted, as appears from the recital in the bonds, does not contain a provision to levy a tax. For this reason, the vote on the proposition submitted is invalid, and confers no power on the Commissioners to issue the bonds.

This provision to levy a tax for the payment of the bonds is a part of the proposition itself. Without this provision the vote on the question is invalid.

The purchaser of these bonds is bound to know the law governing their issue. If what has been done by the Commissioners in submitting the question to a vote of the people appear on the face of the bonds, he is bound to know whether or not the law has been complied with.

In this case, the provision to levy the tax was to collect tolls on the bridge in question. Had that been stated on the face of the bonds, the purchaser would have had notice. This notice is given the same when the proposition is given in full, omitting the provision to levy the tax.

It is true the answer in setting out this proposition provides that one mill on the dollar of the assessed valuation of the taxable property within the precinct may be levied each year, provided the tolls are not sufficient to pay the interest and necessary repairs on said bridge. The one mill tax would not pay to exceed $1,000 a year, as the total valuation of all the taxable property in the precinct is less than $1,000,000. The interest on these bonds is $5,000 a year. It would require a levy of over five mills to pay it. It is very clear the reason why the provision to levy the tax was not inserted in these bonds. It did not comply with the Statute. The levy was only to be made under certain circumstances and that for a private purpose.

It cannot be claimed that the proposition recited on the face of these bonds was not all the proposition submitted. The language is: "THE FOLLOWING PROPOSITION WAS SUBMITTED." This recital is true, but it is not enough. The provision to levy the tax is omitted; not only in the recital itself, but is omitted in fact in the proposition that was submitted. The purchasers of these bonds are bound to take notice of the manner in which the funds are raised to pay them. It can only be done by taxation. They are bound to know under what circumstances the officers can levy and collect this tax. If from the recital on their face it appears that the law has not been complied with, giving the officers power to levy and collect the tax, then the holder cannot claim to be an innocent purchaser. Under such circumstances the plain-

tiff must aver and prove that the proposition was accompanied by a provision to levy the tax. The rule, I take it, is the same as laid down in Marsh vs. Fulton county, 10 Wallace, 676. In this case there was no recital on the face of the bonds that they were issued in pursuance of the Statute authorizing their issue. The rule laid down in Floyd Acceptances, 7 Wallace, 666, is followed in this case. The county officers allowed to show that the conditions precedent incident to the power to issue had not been complied with.

"Therefore this bond is issued in pursuance thereof (meaning the proposition preceding this statement) as well as under the provisions of an act of the Legislature of the State of Nebraska, approved February 15, 1869, entitled: 'An act to enable counties, cities and precincts to borrow money on their bonds to aid in the construction or completion of works of internal improvement in this State, and to legalize bonds already issued for such purposes.'"

According to this recital it appears that these bonds were issued under the Statute referred to. According to Webster, the word 'under' means with pretence of, with the cover or pretext of. Now I submit that the fact that these bonds were issued under cover or pretext of authority contained in this Statute is not a statement that they were issued in pursuance of and in accordance with the law governing their issue. These bonds must contain a recital that the conditions have been complied with, or a recital which implies such a compliance. It certainly cannot be claimed that from this recital it implies that these bonds were issued in pursuance of and in accordance with this act of 1869.

Another objection to this recital having any effect in this case is his: The recital in the bonds purports to give the proposition submitted to the electors of the precinct. This proposition, as recited on the face of the bonds, is complete. From the proposition it appears that the law has not been complied with in not containing a provision to levy a tax to pay the principle and interest. Now suppose that the bonds contained a recital on their face that the law had been complied with in their issue, also, as in this case, a recital giving the proposition in full, and that proposition not answering the requirements of the law, which

of the two would govern? In the last it would very clearly appear that the Commissioners were not very good lawyers, or they never would have made the statement. The recitals would be in conflict with each other. The purchasers of the bonds would be notified that the law had not been complied with, also that it had. This proposition is too plain to require argument to show its absurdity.

The recital showing what has been done must govern; if that is notice the purchaser must look beyond this statement before he invests his money; if he does not do so he has no one to blame but himself. If this position be correct, then it must be conceded that the petition in this case is insufficient, for the reason that there is no allegation that a provision to levy a tax was a part of the proposition submitted, and that the same was adopted.

In conclusion we claim that no recovery can be had in this case.

FIRST—Because there was no authority to issue the bonds for the purpose named in the answer.

SECOND—They were issued without first submitting the question to a vote of the electors of the precinct. The proposition submitted did not confer power upon the Commissioners to issue them.

THIRD—The bonds on their face show that the law governing their issue has not been complied with, which is notice to the purchaser.

FOURTH—The answer makes a complete defence.

For these reasons we claim that no recovery can be had.

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In the Supreme Court

OF THE

UNITED STATES.

October Term, 1877.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DODGE.
Plaintiff in Error,
vs.
GEORGE B. CHANDLER.
Defendant in Error.

Error to the Circuit Court for the District of Nebraska.

Brief of Defendant in Error.

WM. H. MUNGER,
Attorney

The Board of County Commissioners of the County of Dodge,
PLAINTIFF IN ERROR

vs.

GEORGE B. CHANDLER,
DEFENDANT IN ERROR.

This action was brought by George B. Chandler in the Circuit Court to recover an amount due on interest coupons attached to certain bonds issued by Fremont precinct, a local subdivision of Dodge county.

Defendant answering admits the execution and delivery of said bonds with interest coupons attached, but says that the only authority for issuing the same was by virtue of a vote of the electors of said precinct had on the 11th day of November 1870, voting upon a proposition submitted by the proper authorities, to issue the bonds of said precinct to the amount of $50,000, for the purpose of erecting and maintaining a toll bridge across the Platte River in said precinct. That the bonds were issued for the sole and only purpose of building and maintaining a toll bridge provided for in said proposition. That the power and authority to build toll bridges or vote aid for the same is not given by the act of the Legislature approved February 15th, 1869, and that said bonds were issued without authority of law and void.

It is admitted by the pleadings that Chandler is an innocent purchaser for value of said coupons before the same became due.

Since the rendition of the judgment in this case in the Circuit Court an action was commenced in the Supreme Court of the State by the Fremont Building Association vs the County Treasurer of said county to restrain the collection of the tax levied to pay these same interest coupons. That case was decided at the March term 1877 of the Court, and as it has not yet been officially published I include the opinion entire which was delivered by Lake, C. J., who said:

"This is an original application for a temporary order of injunction to restrain the collection of a tax levied upon the property of the plaintiff by the commissioners of Dodge county to pay the interest on certain bonds of Fremont precinct in said county issued for the purpose of constructing a wagon bridge across the Platte river. This proceeding is taken upon the theory that the bonds in question were issued without authority of law and absolutely void even in the hands of BONA FIDE holders by whom it is alleged that some of them are now owned

"The first objection urged against the bonds is that they were issued to aid in the construction of a toll bridge, which it is insisted there is no authority for a county or precinct to do. But even conceding that these governmental agencies have no legal right to engage in the business of toll gatherers, which can hardly be questioned, this furnishes no valid excuse for the repudiation of these bonds, especially when they have been negotiated and have passed into the hands of innocent parties. They bear no infirmity on their face, but on the contrary purport to have been issued for a lawful purpose and in strict conformity to the statute authorizing this sort of precinct indebtedness.

"In the case of the Union Pacific Rail Road Company vs The commissioners of Colfax county, this court held the building or repair of a public bridge across the Platte River to be a work of "internal improvement" which a county might aid by the issue of its bonds as provided in the act of February 15th, 1869, and to this construction of the act in question we still adhere.

"By Sec. 7 of this act there is given to precincts the same privilege of voting aid to works of "internal improvement" as is conferred upon the counties of the State.

"When bonds are voted by a precinct the Co. Commissioners are required to issue them as in other cases, but they must contain a statement

showing their 'special nature.' In every formal requisite these bonds are faultless, but it is sought to invalidate them by going back to the proposition under which they were voted and pointing out certain defects therein. The chief of these defects is that it was proposed to make said bridge self sustaining by the collection of tolls from persons crossing it.

"In 'State of Missouri ex rel., Neal vs. Saline County' 48 Mo. 390, it was held that a material omission in the submission of the question of voting county aid to a railroad company was not sufficient to render its bonds void in the hands of BONA FIDE holders. In that case it appeared that the vote did not specify "the amount" to be issued which the statute authorizing the aid imperatively requires, and the county records showed the defect in this particular; yet the court held it to be 'an error or irregularity of which the county authorities should have taken notice, but which, the election having been passed upon and approved by them, should not effect strangers.'

"As to the fact which was urged upon the attention of the court as it is in the case before us, that the record showed the irregularity the court said: 'This is true, and doubtless the equity of the relator would be stronger had it been otherwise. But practically it makes but little difference. Purchasers would ordinarily inquire whether the law authorized the vote and whether the vote had been taken. It is very seldom that they inspect the record, or if they should do so that they would be able to detect the error. When these bonds were negotiated it seems not to have been discovered by any one, even by those in charge of the record and who participated in the proceedings, and it would be altogether wrong to punish the relator for not having found it out.'

"We think these remarks of the learned judge pronouncing the decision in that case apply with much force in the case we are considering. These bonds recite the fact that they were 'issued in pursuance of and in accordance with a vote of the electors of said Fremont precinct at a special election held on the 11th day of November, 1870, at which time the following propcsition was submitted:

"'Shall the County Commissioners of Dodge County, Nebraska, issue their special bonds on Fremont precinct in said county to the amount not to exceed fifty thousand dollars, to be expended and appro-

priated by the county commissioners, or so much thereof as is necessary in building a wagon bridge across the the Platte River in said precinct * * * * which proposition was duly elected, adopted and accepted by o majority of the electors in said precinct voting in favor of the proposition' * * * * * * Then follows a statement that the bonds were issued in pursuance of said vote and under the provisions of the act of February 15th, 1869, above referred to

"Here then we have a plain recital of facts which actually occurred and which under the Statute gave to the Commissioners ample authority to issue the bonds. There is not the least intimation that it was in contemplation to make this improvement a toll bridge, and the reasonable inferance to be drawn from the fact disclosed by the bonds themselves is that it would be free to all.

"But whatever effect the proposition in the submission to make this a toll bridge would have had if urged at the proper time as a reason for restraining the negotiations of these bonds, it most certainly furnishes no just ground for resisting their collection after they have been put upon the market and transferred in the due course of business to innocent parties.

"There is no principle either of equity or morality that would be subserved if this were held to be sufficient to defeat the obligation assumed by the precinct in good faith and by which large sums of money have been procured and expended for the benefit of the people residing therein.

"The building of this bridge was essentially a public enterprise undertaken for the benefit of the people at large, and it cannot be deprived of that character by the mere fact of the Commissioners having at the instance of the precinct exacted illegal charge for its use. If as is contended a precinct have no authority to operate a toll bridge, then the payment of tolls by those desiring to use it may be successfully resisted; but the fact of their imposition, however illegal, cannot be held to invalidate a tax levied in pursuance of the Statute to meet the obligations assumed by the precinct in making the improvement.

"Another point argued in the brief of counsel against the validity of this vote is that there was no provision for the levy of a tax to meet these bonds as they should fall due.

"This objection is not supported by the facts; the records show that the proposition to levy a tax as it should be found necessary, not exceeding one mill on the dollar valuation on all the taxable property in Fremont precinct to keep up the necessary repairs on the bridge, to meet the contingent expenses and also to pay the interest and principal of said bonds as they fell due, was adopted. There was therefore a full compliance with the requirements of section 19, ch. 13, Gen. Statutes upon which this obligation is based. It is true that the amount of the levy is limited to one mill on the dollar, but the presumption is that this rate was considered amply sufficient by the Commissioners, and for aught that now appears it is so.

"But we are of the opinion that this section of the Statute has no application to this sort of vote, but that it relates solely to the question of borrowing money or extraordinary outlays by a county other than for the purposes of internal improvement.

"By section 2, ch 35, Gen. St., which was passed March 3d, 1870, and subsequently to the statute cited by counsel it is provided that 'The proposition of the question' (of aiding works of internal improvement) 'must be accompanied by a provision to levy a tax annually for the payment of the interest on said bonds as it becomes due; Provided that an additional amount shall be levied and collected to pay the principal of said bonds when it shall become due, and, Provided further that no tax shall be levied or collected to pay any of the principal of said bonds until after the year 1880.'

"It will be observed that by this statute the proposition voted upon need be 'accompanied only' by a provision to levy a tax annually for the payment of the interest on said bonds as it becomes due, while as to the principal it is made the duty of the proper officers at the proper time to levy a tax sufficient to meet it as it becomes due, regardless of any vote that may have been taken or omitted on that subject.

"Failing to discover any valid objection to the tax in question, the prayer of plaintiff must be denied and the case dismissed.

"Judgment Accordingly."

The above case involving the validity of these same bonds in the state court of last resort should be binding upon the Federal court because it involves the construction given to the state statute in this.

The court holds that a bridge across the Platte River is a work of internal improvement such as is contemplated in the act of February 15th, 1869.

That precincts under the provisions of said act have power to vote and issue their bonds to aid such enterprises.

That the fact of the proposition voted upon contained a provision that the bridge should be a toll bridge does not invalidate the bonds. That in issuing the bonds all the formal requisites of the statute were complied with and that the bonds are valid and binding obligations of the precinct.

But assuming that the decision above is not binding upon this court, and conceding that there was no authority to construct toll bridges as contended by defendant, let us see whether the issuing of the bonds in question was ULTRA VIRES in a sense that the defendant can avail itself of the plea when they are in the hands of a BONA FIDE holder before due.

In Miners' Ditch Co. vs Zellerbach, 47 Cal., Sawyer, Chief Justice, says: "The term ULTRA VIRES, whether with strict propriety or not, is used in different senses. An act is said to be ULTRA VIRES when it is not within the scope of the powers of the corporation to perform it under any circumstances OR FOR ANY PURPOSE. An act is also sometimes said to be ULTRA VIRES with reference to the rights of certain parties when the corporation is not authorized to perform it without their consent, or with reference to some specific purpose, when it is not authorized to perform it for that purpose, although fully within the scope of the general powers of the corporation, with the consent of the parties intended, or for some other purpose. When an act is ULTRA VIRES in the first sense mentioned, it is generally, if not always, void in toto, and the corporation may avail itself of the plea; but when it is ULTRA VIRES in the second sense, the right of the corporation to avail itself of the plea will depend upon the circumstances of the case. When the act in question is one which the corporation is not authorized to perform, under any circumstances, the defense is available to the corporation against

all persons, because they are bound to know frow the law of its existence, that it has no power to perform the act; but when the act is authorized, for some purposes, but not for others, the defence may or may not be available, depending upon the question whether the party dealing with the corporation is aware of the intention to perform the act for an unauthorized purpose, or under circumstances not justifying its performance. And the test as between strangers having no knowledge of an unlawful purpose, and the corporation is to compare the terms of the contract with the provisions of the law, from which the corporation derives its powers, and if the Court can see that the act to be performed is necessarily beyond the powers of the corporation FOR ANY PURPOSE, the contract cannot be enforced, OTHERWISE IT CAN."

In Bissel vs the Michigan Southern and Northern Indiana Railroad companies, 22 N. Y , Mr. Justice Seldon says: "There are no doubt cases in which a corporation would be estopped from setting up this defense although its contract might have been really unauthorized.' It would not be available in a suit brought by a BONA FIDE indorsee of a negotiable promissory note, provided the corporation was authorized to give notes for any purpose, and the reason is that the corporation by giving the note has virtually represented that it was given for some legitimate purpose and the indorsee could not be presumed to know the contrary."

In the same case Mr. Justice Comstock in his opinion says: "But is it true that all contracts of corporations for purposes not embraced in their charters are illegal in the appropriate sense of that term? This proposition I must deny. Undoubtedly such engagements may have the vices which sometimes infest the contracts of individuals. They may involve a MALUM IN SE or a MALUM PROHIBITUM, and may be void for any cause which would avoid the contract of a natural person; but when no such vices exist, and the only defect is one of power, the contract cannot be void, because it is illegal or immoral. Such a doctrine may have some slight foundation in the earlier English railway cases. The books are full of cases upon the powers of corporations, and the effect of dealing in a manner and for objects not intended in their charters. But with the slight exception named, there is an entire absence not only of adjudged cases but even of judicial opinion or dicta

for the proposition that mere want of authority renders a contract illegal. Such a proposition seems to me absurd."

And in M. D. Co. vs Z., 37 Cal., the learned Judge says: "The very fact that the appointed officers of the corporation assume to do an act in the apparent performance of their duties, which they are authorized to perform for the lawful purposes of the corporation, is representation to those dealing with them that the act performed is for a proper purpose. And such is the presumption of the law and upon this presumption strangers having no notice in fact of the unlawful purpose are entitled to rely (citing Commissioners of Knox county vs. Aspinwall, 21 How., U. S., Gilpecke vs. city of Dubuque, 1 Wal., U. S., Bank of U. S. vs. Dandridge, 13 Wheaton) upon any other principle there would be no safety in dealing with corporations. * * The officers are appointed by the corporation, and if any loss results to strangers dealing with the corporation from their misrepresentation in matters within the general scope of their duties, it should fall upon the corporation, which is responsible for their appointment, rather than upon parties who have no other means of ascertaining the facts and must rely upon their assurances or not deal with the corporation at all."

In case of Supervisors vs. Schmek, 5 Wal., U. S., Justice Clifford says: "When a corporation has power under any circumstances to issue negotiable securities the decision of this Court is that the BONA FIDE holder has a right to presume they were issued under the circumstances which give the requisite authority, and they are no more liable to be impeached for any infirmity in the hands of such a holder than any other commercial paper. On the contrary, it is settled law that a negotiable security of a corporation which upon its face appears to have been duly issued by such corporation, and in conformity with the provisions of its charter, is valid in the hands of a BONA FIDE holder thereof without notice, although such security was in point of fact issued for a purpose and at a place not authorized by the charter of the corporation."

Citing Gilpeck vs. Dubuque, 1 Wal., 203; Stoney vs. Life Ins. Co., 11 Paige ch. 635; F. & M. Bank vs. B. & D. Bank, 16 N. Y., 129; Goodman vs. Simond, 20 How., 363; Thompson vs. Lee Co., 3 Wal., 327.

To the same effect is also the Bank of Genesee vs. Bothen Bank,

13 N. Y., 315, 19 N. Y., 312; Mich. Banking Ass. vs White Lead Co., 35 N. Y., 505.

The same principle was again discussed and asserted in City of Lexington vs. Butler, 14 Wal , U. S., and recognized as the established rule from repeated decisions of that Court.

The law, then, seems to be settled that if the power exists to issue negotiable securities for any purpose the fact of the issue justifies third parties in presuming that they were issued for such purpose.

The next step, then, is to ascertain whether the County Commissioners of Dodge county had power to issue the bonds of Fremont precinct, for any purpose; and upon this point there can be no doubt. The supreme court of Nebraska, in the case of the U. P. R. R. Co. vs. Colfax county, 4 Neb., in an able and exhaustive opinion by Maxwell, Justice, holds that the power exists under the Legislative enactment approved Feb. 15, 1869, to issue the negotiable bonds of counties and precincts in the construction of bridges, as well as other works of internal improvements.

The plaintiff having no actual knowledge of the purpose for which the bonds in question were issued, the next question to be determined is, do the bonds upon their face import any notice? or would they require the plaintiff to look further than the law under which they purport to have been issued to ascertain if the power existed?

In Pollard vs. Pleasant Hill, 3 Dillon, C. C., the second class of coupons sued on were on funding bonds, and the petition as to them alleged that they were issued in pursuance of an act of the General Assembly of Missouri, authorizing the funding of the floating debt of the city; that the bonds issued; that plaintiff became the holder for value before maturity, and that coupons were not paid on presentation.

The answer sets up that the bonds were not issued in payment of outstanding warrants, or in satisfaction of liabilities of the city, but that they were issued to raise funds to improperly influence legislation, quoting an ordinance of the city, from which it would appear that such was the case. Krekel J. said, "However much we may deprecate that any people should thus expose themselves on their own record, and swift as this court would be to visit proper punishment upon the heads of those who would contaminate the fountain of legislation (if the proper

case and parties were before the Court) it would be but aiding and abetting the wrongful acts to allow them to come and set them up in their own defence against innocent holders of the commercial securities they issued. It is admitted that legal authority to fund the floating debt of the city existed, and that the bonds on their face purported to be issued under and by virtue of it. This binds the city. The use made of the proceeds of the bonds cannot effect holders for value." (Dillon, Circuit Judge, concurred.)

Citing Fagg vs City of Palmyra, 33 Mo., 440; Grand Chute vs Winegar, 15, Wall, 335.

In Moran, et al. vs Commissioners of Miami county, 2 Black, Justice Wayne says: "We are relieved from the task of considering several of the arguments of counsel and the pleadings on the record. Believing as we do that the defendants are estopped from denying the declarations as to the purpose and cause for which the bonds were issued, and that the coupon holders had a right to infer from the face of the bonds that they had been regularly issued by the county of Miami * * * We repeat now, as appropriate to the subject-matter of the case in hand as it was in the case in which this court said it, that corporations are as strongly bound as individuals are to a careful adherence to truth in their dealings with mankind, and that they cannot by their representations or silence involve others in onerous engagements, and then defeat the calculations and claims their own conduct had superinduced * * * The first point of the plaintiff's counsel was that even if the bonds had been issued irregularly, and not in strict conformity with the power of the county to borrow money, that the defendant is nevertheless estopped by the bonds themselves, which on their face express that they were issued for a loan of the amount to the county, as authorized by the act of the General Assembly to borrow money, and that such bonds being habitually received and passed as commercial securities and being BONA FIDE in the hands of the plaintiff, that they were entitled to recover the amount of interest sued for, notwithstanding there might be equities between the original parties to the transaction. It is not necessary for us to follow out the plaintiff's argument in this particular, thinking it as we do conclusive." * * * *

That the BONA FIDE holders of the bonds, whether so by endorsement or delivery, had a right to infer that the bonds had been lawfully issued, by which the county of Miami is estopped in a suit for the recovery of the interest from denying by pleas that its bonds had been issued to the Peru and Indianapolis railroad for a loan of money to the county of Miami. We think and adjudge that the recitals in the bonds are conclusive, constituting an ESTOPPEL IN PAIS upon the defendants in this suit."

Citing in support Gerrard vs Bradley, 7 Ind.; Reeves & Andrews, Ibid 207; Francis vs Porter, Ibid 214; May vs Johnson, 3 Ind. 448; Trimble vs Slate, 4 Black, 435, 8 Blockford, 258; Ryan vs Valandingham 7 Ind. 416, 24 How., 375; 23 How., 381 and others.

In Mercer Co. vs Hackett, 1 Wall., Justice Grier says: "The bonds declare on their face that the faith, credit and property of the county is solemnly pledged under the authority of certain acts of Assembly, and that in pursuance of said act, the bonds were signed by the Commissioners of the county. They are on their face complete and perfect, exhibiting no defect in form or substance, and the evidence offered is to show the recitals on the bonds are not true. Not that no law exists to authorize their issue, but that the bonds were not made in pursuance of the acts of Assembly authorizing them. We have decided in the case of Commissioners of Knox county, vs Aspinwall that when the bonds on their face import a compliance with the law under which they were issued, the purchaser is not bound to look further."

The bonds for which the coupons sued on in this action are detached recite that they are issued by virtue of an election had in said precinct on the 11th day of November, 1870, for the purpose of voting upon the proposition of issuing the bonds of the precinct in the construction of a bridge across the Platte river, and as well in pursuance of an act of the Legislature of the State of Nebraska, approved Feb 15th, 1869, entitled an "Act to enable counties, cities and precincts to borrow moneys on their bonds, or to issue bonds to aid in the construction or completion of works of internal improvements in this State, and to legalize bonds already issued for such purpose," and that a majority of the votes cast at said election were cast in favor of said proposition.

From the foregoing authorities it seems clear that the case at bar comes clearly within the rule that defendants are estopped from denying that said bonds were issued in pursuance of objects contemplated in said act of the Legislature before recited.

But counsel for defendant contend that the rule laid down in Marsh vs Fulton county, 10 Wall., 676, fully supports the doctrine they contend for, and is decisive of this case.

A careful examination will I think lead to a different conclusion. In that case there was no recitals that the bonds were issued in persuance of any law or authority, consequently the law of estoppel did not apply and for that reason the case is not applicable to the case at bar.

Nor does the court in the Floyd acceptance case, 7 Wall., 666, lay down a rule different than we contend for in these cases. The facts were that parties having contracts with the government for the furnishing of supplies drew their drafts upon the war department, which were accepted by John B. Floyd, the then Secretary of war. The court held that there was no law which authorized the secretary to accept drafts which would be binding upon the government; that the only authority was a custom which had been adopted for convenience." And like the case of Marsh vs Fulton county (supra) contains nothing which conflicts with the law of estoppel so rigorously enforced by the Supreme Court of the U. S. in the cases before cited; and in the dissenting opinion of Justices Nelson, Grier and Clifford it is said "These are not bills of exchange in the sense of the law merchant or possessing the properties of negotiable paper. * * * The instruments not being negotiable the assigns or holders taking them are subject to all the equities that may exist between the acceptor and the drawer.

But defendant says that the recital in the bonds purports to contain the whole of the proposition submitted, and that because of the omission to provide for a tax with which to pay the interest and bonds as the same matures therefore plaintiff had notice of the equities.

The statute which was the law under which said bonds were voted provides that precinct bonds shall contain a statement showing the special nature of such bonds. There is no requirement that the whole of the proposition shall be inserted in the bond, only so much as shall indicate the purpose for which they are issued. The objection which

counsel for defendant urges that the language and words be construed as containing the whole of the proposition, is to my mind purely technical, and if a technical construction is to be given then we claim that the law does not require the proposition to contain a provision for the levy of a tax, but only requires it to be accompanied with a provision to levy the tax and not included in as a part of such proposition. In other words the law requires a proposition to be submitted to the electors for their decision as to whether the bonds shall be issued for the purpose indicated, and this proposition shall have as a companion or associate a provision to levy the tax; it is not treated as a part of the proposition nor is it such.

Section 6 of the law of 1869, under which the bonds were issued, is as follows: "Any county or city which shall have issued its bonds in pursuance of this act shall be estopped from pleading want of consideration therefor, and the proper officers of such county or city may be compelled by mandamus or otherwise to levy the tax herein provided to pay the same."

The defense urged by the learned counsel for defendant is not that there was no actual or valuable consideration received by the precinct for the bonds in question, but that the consideration was in its nature illegal. It seems to me that the section of the statute before referred to if it means anything, or was intended to be effectual in any manner, will estop the defense of illegal consideration as well as when there was no consideration at all, for in law illegal consideration if available at all as a defense it is as of no consideration.

II.

But let us se whether this toll bridge is a private and not public improvement as contended for by the counsel for the county. For if it is a public bridge it comes within the objects contemplated by the act of Feb. 15th, 1869, as we have seen from the decision of the Supreme Court of the State cited(supra).

That the bridge was built and is owned expressly by the public corporation is not denied. Wherein then does it partake of a private

enterprise? Counsel say because it is not free in its use to all; only to such that have the means to pay. Does this fact alone change the character of the improvement in this regard? By a long series of decisions in the State and Federal Courts, statutes authorizing municipalities to subscribe for stock in railroads, and tax the property of the people to pay for the same, have been upheld and declared not repugnant to the Constitution. Upon what principle have these decisions been made? Justice Valentine, in Leavenworth county vs Miller, 7 Kan., page 512, in one of the fullest and ablest reviews of the authorities upon this question I have been able to find, says: "We suppose that it will be admitted that it is a duty incumbent upon all governments to provide suitable and sufficient facilities for the travel and commerce of the country. Canals, roads, bridges, and other artificial means of passage and transportation from one part of the country to the other have been made by the sovereign power and at the public expense in every civilized State of ancient and modern times. And to day this State constructs, through the agency of subordinate public corporations, all our common roads, bridges, and thoroughfares.

"In many parts of the civilized world, and particularly on the continent of Europe, (and in every part it might be done,) the railroads of the country are constructed, owned, and operated by the government. Many States of the Union have constructed, owned, and operated both railroads and canals, and their right to do so, so far as we are informed, has never been questioned. Some of the States are doing this very thing to-day, without the least suspicion that they are transcending the legitimate bounds of governmental jurisdiction.

"It must therefore be admitted that in the absence of constitutional restrictions this State might construct, own, and operate all the railroads within the boundaries of the State. * * * * * * * The increased facility for travel and transportation is the main object in the creation of railroads, and this it is which constitutes a railroad a public purpose. * * * When this facility is made absolutely free by the government, (all persons having the right to use it,) all will admit that it is then a public purpose, and such a public purpose as will support both the right of eminent domain and taxation. When it is absolutely

free, except that the government demands and receives a compensation for its use, all will admit that it is still a public purpose, and such a one as will support both the right of eminent domain and taxation. When it is absolutely free, except that a railroad corporation receives the compensation instead of the government, though fixed by the government, all will admit that it is still a public purpose, and one that will support the right of eminent domain."

And Justice Brewer, of the same Court, in the next case following the one above, in his dissenting opinion holding that railroad companies are not works of a public nature, says: "But the question arises, what is a public use? Wherein does it differ from a private use? What elements are there which, entering in, assigns a use to one or the other class? A surface answer would be that whatever all may use must be a public use, and that which only an individual or a class may use must be a private use. For ordinary purposes these definitions are sufficient, yet a careful examination will show that they are neither exact nor discriminating; for there are many things which all may use which are not properly classified under the legal term 'public use;' such are hotels, stages, expresses, theatres, circuses, and places of amusement generally. * * * * On the other hand the executive mansion is free only to the governor * * * yet who doubts that this is public use? * * * Here it may be remarked that the exacting of compensation by itself considered throws little light on the question. It is competent for the authorities to demand pay for the use of almost all public property. An admission fee to a public library, public museum, OR A TOLL UPON A PUBLIC ROAD MAY LAWFULLY BE CHARGED. And on the other hand the owner of a private park, or a private library, does not render them public by permitting the public to enter and use them without pay. But when we look beyond the mere receipt of the compensation to the purpose for which it is received, and the direction it takes after receipt, we find an important test If the compensation is received simply for the purpose of keeping up and improving that which is used, and any surplus is to go into the public treasury to diminish the public burdens, the inference is strong that there is a public use."

The foregoing views it seems to me apply with great force to the case at bar. The only reason given that the toll bridge is not a public improvement is because the authorities charge a toll or tax for its use; but this fee goes into the public treasury and lightens the public burdens. The argument that municipalities may with the same propriety engage in the operation of grist mills and manufactories, if the profits are placed in the public treasury for the use of the public, does not apply, for the reason that grist mills and manufactories are not germain to the objects and purposes of the municipality; while it cannot be contended that such is the case with regard to a bridge erected by the public upon a public road. And again, if municipalities may own and operate railroads, and tax the public for the funds to procure the same, as we have seen may be done, and tax and charge reasonable rates of tariff to persons using them, for what reason does not the same principle apply with regard to public bridges? In the case of the U. P. R. R. Co. vs. Colfax county, SUPRA, Justice Maxwell says: "It is evident that the word AID as used in this connection by the legislature has a much broader meaning than that contended for by the plaintiff's counsel, and it is not necessarily restricted to works of internal improvements in which the county has no interest. The funds under the control of the County Commissioners for the purpose of building bridges and opening roads are probably sufficient for ordinary cases, but in counties bordering upon or traversed by the Platte river the amount thus placed at their disposal is clearly insufficient for the purpose of erecting a bridge across the river. The word AID, as used, evidently means that the county may contribute toward the cost of the improvement by issuing its bonds, a portion of the fund necessary to make the improvement to be contributed in some other manner as by grant from the State, donations by two counties bordering on the river uniting in the enterprise, etc., but does not necessarily repel the conclusion that the county may construct the desired improvement for the benefit of the public. * * * * * * * The characteristics of the Platte river are a matter of history and are well known, as well as the difficulty experienced in crossing it. A bridge of this kind affords a safe and convenient means of communication across the river, increases

the facilities for transportation and travel and has all the characteristics of a work of internal improvement. We are accustomed to hear works of internal improvement spoken of as involving miles of railway or canal and requiring the expenditure of millions of dollars, but neither the cost nor extent of such works determine their character. * * * * * * Such works must be tested by the benefits to be derived by the public from their construction rather than by their extent or cost. A public road constructed through an otherwise impassible portion of the country is a work of internal improvement; railways are said to be improved roads constructed for public use, although owned by private corporations, and taxation to aid their construction is sustained by the courts on the ground alone that they are essentially public in their character."

From the foregoing we find that a railroad is a work of internal improvement which may be constructed and owned by the municipality under the act of February 15th, 1869. That a bridge across the Platte river is of the same character and essentially a work of internal improvement, which may likewise be constructed and owned by the municipality.

That the fact that railroads are constructed and operated for the purpose of gain, does not alone deprive them of the characteristics of internal improvements.

Upon what principle, then, can it be said that a public bridge across a river such as the Platte loses the character of a public improvement because the public officers charge a toll for the purpose of its maintenance?

Counsel do not claim that there is any express legislative provision against this kind of enterprise, but only that it is not expressly given. If, however, the mere fact of toll being charged does not deprive it of the nature of a public enterprise, we are at a loss to see why the bridge in question can not be constructed in the manner provided by said act of February, 1869.

But if the Commissioners have no authority to charge and collect tolls, they may stop doing so, and in that case the objection made is removed and the bridge would then become beyond doubt a public

improvement. Would the authorities be permitted then to say "because we used this structure at one time in an unlawful manner we are not bound to pay the indebtedness incurred in its construction." It seems to me clearly not, and yet there would be no greater impropriety under such circumstances than now.

In the case at bar the proper authorities issued their negotiable bonds, reciting that they were issued in pursuance of lawful authority, and placed them upon the commercial markets of the world. Plaintiff without other knowledge of the facts, invested his money, it was received, and the defendant has enjoyed and is now enjoying the fruitful benefits thereof. Will it now be permitted to say: "It is true that we embarked in a laudable enterprise; we solicited your money to aid us in the furtherance of our designs; we pledged you a faithful return. But we say to you now that our assertions then made were false, and intended to deceive; that we acted beyond our authority; that we care not to redeem our pledge, and we call upon the court to assist us." What answer should the court give? We think it should be: "Your defense cannot now avail. The demurrer to the answer was properly sustained. The judgment of the Circuit Court was right and will be affirmed."

W. H. MUNGER,
Atty. for Deft. in error.